THE BRIEF

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Survival of Spanish Law in North America

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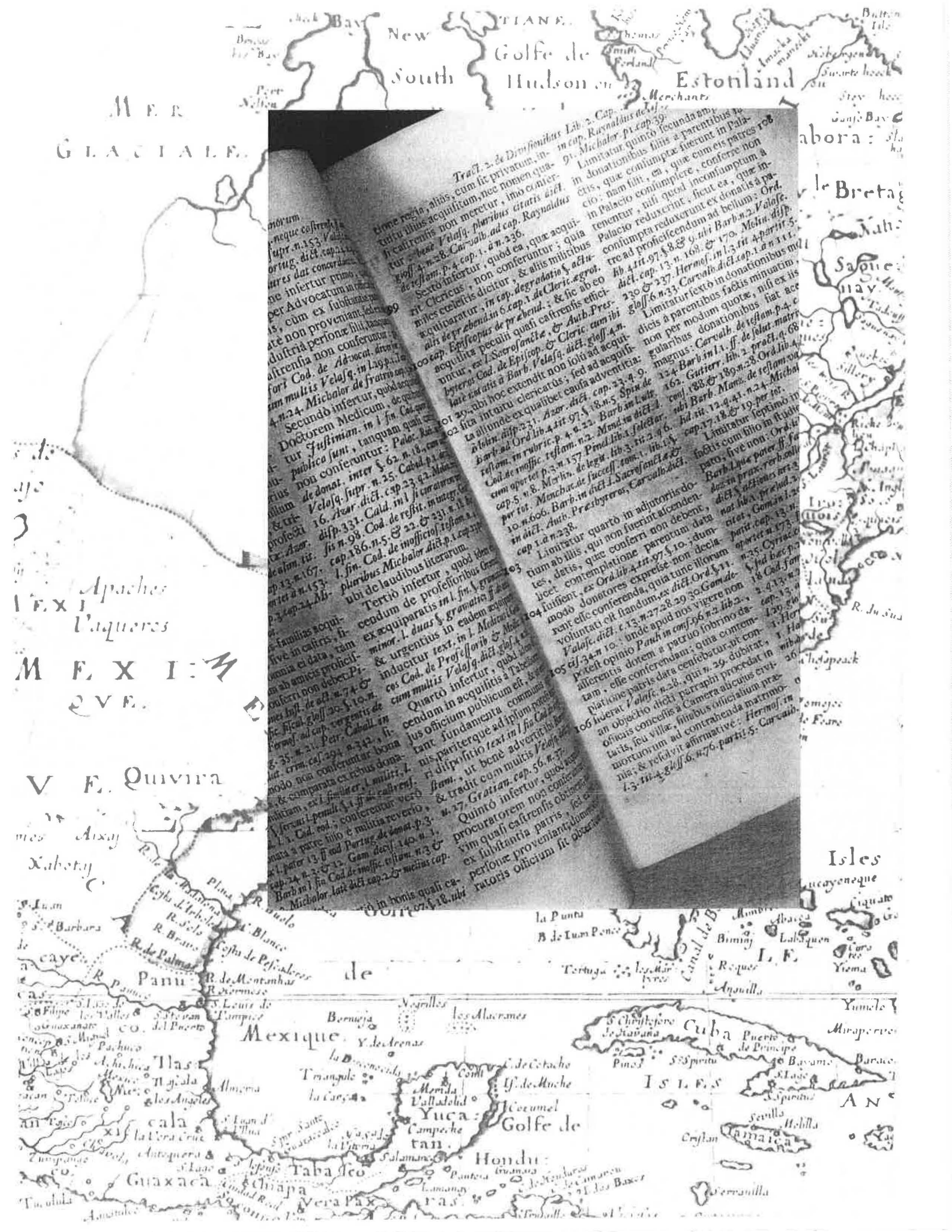
Features

2

8

Departments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tione regia, alias, cum sit privatum, in-
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gloss. 4. n. 28. Carvalh. ad cap. Raynaldus
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Sextò infertur, quod ea, quæ acqui-
rit Clericus, non conferuntur; quia
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20. ubi hoc extendit non tolùm ad acquisi-
ta illunde ex qualibet causa adventitia:
Barb. ad Ord. lib. 4. tit. 97. §. 18. n. 5. Spin. de
testam. in rubric. p. 4. n. 22. Mand. in dict. l.
Cod. de inoffic. testam. n. 2. Pinel. lib. 1. select. cap. 5. n. 8. Merlin. de legit. lib. 3. tit. 2. q. 6.
cum oportet p. 3. n. 157.
per tot. Menchac. de succes. Sacrosanctæ &
10. n. 606. Barb. in dict. l. Sacrosanctæ, Carvalh. dict.
cap. 1. à n. 238.
Limitatur quartò in adjutoris do-
tium ab illis, qui non fuerint ascenden-
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modò donatores expresse non decla-
rent esse conferenda, quia tunc illorum
voluntati est standum, ex dict. Ord. §. 11.
Velasc. dict. q. 13. n. 27. 28. 29. 30. Gom. de
Paz. cap. 13. n. 35. Cyriac.
Barb. in l. fin. Cod. de inoffic. testam. n. 4.
cap. 24. n. 3. & 12. Gam. decis. 140. n. 1.
Barb. in l. fin. Cod. de inoffic. testam. n. 3. &
Michalor. late dict. cap. 2. & multos cap.
Tertiò infertur, quod ideo
cendum de professoribus
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& urgentius in eadem æquipa-
inductur text. in l. Medicos Cod.
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nis pariterque ad ipsum potest
ni dispositio text. in l. fin. Cod.
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tre ad proficiscendum ad bellum; Ord.
lib. 4. tit. 97. §. 8. & 9. ubi Barb. n. 2. Velasc.
dict. cap. 13. n. 168. & 170. Molin. disp.
230 & 237. Hermos. in l. 3. tit. 4. partit. 5.
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162. Gutierr. lib. 2. pract. q. 68
cons. 188. & 189. n. 28. Ord. lib. 4.
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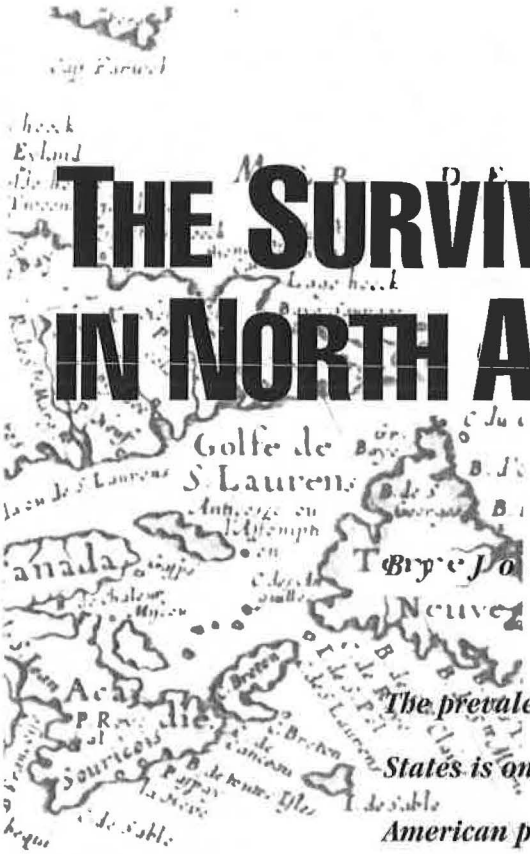


THE SURVIVAL OF SPANISH LAW IN NORTH AMERICA

By Joseph W. McKnight

The prevalence of an Anglo-American system of law throughout the United States is one of the most significant factors in American history. Unlike the American population, which from the mid-nineteenth century had become a melting pot of the world's peoples and cultures, only one legal tradition has generally prevailed. Although several European powers of disparate legal heritage established colonial provinces in North America, the legal cultures of France, Scotland, Sweden, and The Netherlands have disappeared from the law of the United States with very few and very minor exceptions. The legal traditions of Spain are more apparent, but they remain both isolated and specific. ➢ In light of Spanish dominance over the Gulf Coast region, the lower Mississippi Valley, and what is now the American Southwest, the disappearance of most Spanish legal norms is remarkable. While initially slow to settle these regions, by the late eighteenth century Spain had established military outposts with small missions and villages across what are today the states of Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Texas, New Mexico, Arizona, and California. Yet despite the geographical extent of Spain's supremacy, which it held in some areas for a significant period of time, the dominance of Spanish law did not survive Spanish sovereignty. ➢ Within fifteen years of the French occupation of Spain in 1808, the Spanish-American empire had

collapsed. Anglo-American settlers, whose legal traditions were decidedly different from those of their Spanish predecessors, had begun to penetrate the Spanish dominions in the late eighteenth century. By the middle of the nineteenth century, the newcomers had overrun the entire Hispanic frontier and had established territorial and state governments there. With the change of sovereignty, Anglo-Americans settlers also instituted new legal rules and practices based on English law, thereby displacing most of the Spanish law in the region. Nonetheless, limited elements of Spanish law remained.

The survival of some Spanish legal rules and institutions in the southern and southwestern United States raises a number of questions: How was the Anglo-American system of law so quickly adopted in areas that had been dominated by Spanish law? Where and in what form has Spanish law persisted? Why have certain elements of Spanish law persisted? After almost forty years of studying these and other related questions, I offer some answers to these inquiries.

The imposition of American sovereignty, coupled with the great influx of Anglo-American settlers into the region, was the primary cause of legal change on the Anglo-Hispanic frontier.

Migration and Changes of Sovereignty

The imposition of American sovereignty, coupled with the great influx of Anglo-American settlers into the region, was the primary cause of legal change on the Anglo-Hispanic frontier. As American sovereignty extended beyond the boundaries of the thirteen original states and new lands became available for settlement, the trickle of Anglo-American settlers became a torrent. With a new government and the resulting shift in social institutions, Anglo-American law quickly replaced much of the prevailing Spanish law.

Nevertheless, a number of Spanish legal rules persisted. Various factors account for their endurance, among them negative reaction to political change and historical accident. The survival of Spanish law, such as it was, did not result from any concerted effort on the part of the established population to preserve the old legal regime. While some raised their voices in favor of maintaining the prevailing system, any genuine popular resistance to legal change would be hard to document. Only in Louisiana was legislative sentiment strong enough to preserve a Spanish-based system of civil rules, though much of it was expressed in the verbiage of the French *Code Civil*.

The region that retained the greatest amount of Spanish law during the nineteenth century was made up of those areas where the largest number of Europeans had been settled for the longest time prior to the Anglo-American invasion. The states comprising this region, Louisiana, Texas, and New Mexico, were at the center of the old frontier. These territories were carved out of preexisting governmental units, and in accordance with American rules the prior laws continued until changed. Accordingly, the new governments of these states had some sense of continuity with their immediate Spanish or Mexican predecessors, and thus a stronger bond with the old laws. In contrast, the governments of Missouri, Mississippi, Florida, and California had no continuity with the previous regimes because the sudden influx of Anglo-Americans overwhelmed the political influence of the earlier populations.

In addition, because Spanish legal development was largely a function of population density and governmental order, Louisiana, Texas, and New Mexico were areas in which Spanish law had progressed to where it was sufficiently institutionalized to be a part of peoples' lives. Unlike this more central region, the European population of the eastern, northern, and western extremities of the frontier was sparse and thus less influenced by Spanish legal concepts. Consequently, Florida, the upper valley of the Mississippi River, and California retained very little Spanish law following the invasion of Anglo-American settlers.

Departure from Hispanic Norms

The new territorial governments' rejection of most of the existing Spanish law in favor of an Anglo-American system may have been inevitable. In the minds of many Anglo-American settlers, English common law promoted the cause of liberty, whereas continental legal systems were allied with Romanism and despotism. The principal reason, however, for adherence to Anglo-American law in the new territories was that it was the system to which Anglo-Americans were accustomed. Only in California were the relative merits of the two systems debated in the legislative assembly, though in Louisiana and Texas

the issue clearly provoked differences of opinion as well as different legislative results. In addition to a concern that sources of Spanish law in English were generally unavailable, Californian protagonists of the English common law revealed a particular concern for the nature of Spanish contract law when they complained of its use of implied warranties of fitness, a clear inhibition of the then-prevalent Anglo-American maxim of *caveat emptor.*

In retrospect, this debate is ironic because neither system had a firm set of rules and principles. Because of their traditional reliance on communal sentiment expressed by a jury, Anglo-Americans were apparently oblivious of the fact that there really was no English legal *system*—just a patchwork of rules, many archaic and outworn, and vast gaps. Blackstone had undertaken to supply an exposition of the English system, such as it was, but no authoritative text of rules existed. The Spanish legal system was also disorderly. The late eighteenth century summary of Spanish law by Asso and Manuel, though officially ordained for public instruction in Spain and available in an English translation, was not as effectively presented as that of Blackstone. Juan Febrero's contemporaneous professional treatise on Spanish law was considerably better, but Febrero's work was not available in English. The lack of a systematic exposition of Spanish law must account in some measure for the reliance of Louisiana draftsmen on the new and carefully drawn French *Code Civil* for about seventy percent of the Louisiana *Digest* and *Civil Code.*

The Americanization of the laws on the frontier moved forward largely because the new settlers of the region and their lawyers were unfamiliar with any rules but their own.

The Americanization of the laws on the frontier moved forward largely because the new settlers of the region and their lawyers were unfamiliar with any rules but their own. With the exception of Louisiana, the whole frontier shifted from Hispanic to Anglo-American legal dominance in less than three-quarters of a century. In Louisiana, the enactment of a comprehensive civil code, along with the presence of knowledgeable lawyers and judges to administer it, served to impede the process of Americanization. Even so, modern Louisiana law in its day-by-day practice is not strikingly different (apart from terminology) from that of other American states.

Of all the frontier provinces, Texas is the best example of a selective mixing of Spanish law into a predominantly Anglo-American system. Her model was the law of Louisiana, where Anglo-American institutions and rules had been joined to a system initially Hispanic. The leaders in this process of legal melding were Anglo-Texan lawyers familiar with Spanish doctrine they had learned from Louisianian sources during the 1820s and '30s.

Legislation

The most significant institution of government introduced by the intrusion of American sovereignty was the representative assembly. By possessing a law-making capability, the new American territorial governments differed greatly from those of their Spanish predecessors. Unlike the American territorial governments, administration of the Spanish frontier was largely in the hands of military governors, fiscal officers, and their legal advisers. These men were not inclined to depart from prescribed practice, at least as they understood it. Without any effective means of legislating, Spanish settlers on the frontier could not have meaningfully changed the law even if they had been inclined to do so.

While American frontier settlers maintained a spirit of independence and innovation, leaders of the United States government espoused a strong attitude of nationalism during the early nineteenth century. This attitude supported the summary Americanization of the law in Mississippi, Missouri, and Florida territories. It also prompted the negative reaction of the predominantly French-speaking Louisiana legislature to preserve existing legal institutions in 1806. Following this reversal, legal Americanization continued as new territories began to govern themselves, but with less impetus from the national government.

As had earlier occurred in English North America, most of the frontier governments enacted reception acts, receiving English common law to supply general rules not provided by statute. Reception acts not only filled voids in the law; they also served to limit the applicability of Spanish law. Although reception acts followed no particular pattern in time or region, Hispanic rules not embodied in legislation could not

easily survive after the general reception of Anglo-American law. As a result, a territory's adoption of a reception statute confined the future scope of Hispanic law to legislative enactments that departed from Anglo-American rules.

Not all territorial governments promptly passed reception acts. For example, the Mississippi Territory simply assumed English common law to be in effect without a reception act. Louisiana codified the civil law along continental lines, with later statutory encroachments of American law but no reception act. New Mexico had substantially Americanized its laws by the time it received Anglo-American law in 1876. Unlike their varied acceptance of the reception acts, however, all the American territories as a matter of course immediately adopted Anglo-American criminal law.

Because rules of law were recognized as within the professional competence of lawyers, lawyers played a principal role in formulating legislative rules of both substantive law and procedure. In the sense that choices of models for statutory enactments were culturally based, Anglo-Americans tended to look to their own sources, whereas the draftsmen of the Louisiana code and certain New Mexican statutes relied on continental models. In Texas some blending of both legal cultures occurred because Texan draftsmen relied on both Anglo-American and Louisianian models.

In many instances it is misguided to seek a rational explanation for retention or disappearance of Spanish legal rules. The results often look like happenstance. In the legislative process a timely burst of oratory favoring, or opposing, retention of a legal doctrine has made the difference between persistence or abolition. Due to haste or lack of serious concern, many developments are explicable only as accidents: borrowed or adapted legislation based on a casually chosen model; legislative amendments adopted with little reflection or care; rejection of a carefully prepared proposal; or the inclination of an appellate court to look to an ill-chosen outside source for interpretation or amplification of a statutory rule. Though these events tended to be fortuitous, in almost every instance a legislative act was the controlling factor in the preservation or disappearance of Hispanic legal rules.

Without lawyers among the Anglo-American settlers in Texas during the 1820s and '30s, a familiarity with Spanish rules and their consequent transmission by legislation would not have occurred.

Customary Usage

Legislative enactments of Spanish law reflected prior familiarity with rules previously in force in the region, but without full records it is difficult in many instances to assess precisely how local conventions and usages survived. Although we may conjecture a general awareness of Hispanic legal traditions among local legislators of Hispanic descent or of those representing Hispanic constituencies in Texas, New Mexico, and California, they do not seem to have been inclined to codify traditional rules except on a very limited basis.

Despite this lack of concern to codify many rules, legislation was passed to preserve the customary usage of Spanish law in a number of specific areas. Texas statutes from the 1840s and '50s concerning matrimonial property, succession, estate administration, civil procedure, minerals, and irrigation evidence an awareness of Hispano-Mexican legal norms, but the texts of some of these laws were imported by Anglo-American lawyers from Louisiana. Statutes concerning succession, irrigation, and peonage, enacted by the New Mexico legislature in the 1850s, also exemplify Hispanic traditions. The most striking instance of survival of customary Spanish practice in New Mexico related to marital property rights, which were not codified in any meaningful way until forty years after much of the law and practice had been substantially Americanized in the 1840s. The *only* surviving Hispanic legal usage in California, however, was the law of marital property, and its rules were borrowed from the laws of Texas and Louisiana. Arizona and Nevada, in turn, followed California law in this regard, with some later infusion of Texas rules in Arizona.

Of the limited number of Spanish legal norms to survive, most of them concerned the law of succession and related areas of the law, including marital property, forced heirship, adoption, and estate administration. Because of its relationship to death and the disposition of property at death, the law of succession touched all who acquired property on the frontier. Insofar as the acquisition of land was one of the principal aims of migration to the region, the basic rules governing the law of succession were not only extensive and precise but were well known by lawyers, judges, and public administrators. Commercial

law was not well developed outside of lower Louisiana at the end of the eighteenth century, and matters of criminal law generally concerned issues of fact rather than of law. The law of succession, on the other hand, required a more general reliance on specific rules. As a result, legislators had a greater impetus to codify Spanish rules relating to succession, whereas a corresponding lack of awareness of commercial and criminal law allowed the introduction of Anglo-American rules with no attempt to preserve existing practices.

Lawyerate and Judiciary

Despite the efforts of lawyers in steering territorial governments toward adopting Anglo-American systems of law, lawyers in some areas, primarily Louisiana and Texas, were instrumental in retaining Hispanic legal principles. Lawyers in those two states were familiar enough with the old rules to preserve them, and consequently the rate of retention of Spanish law was highest there.

Elsewhere such sentiment as there was in favor of Hispanic law was ineffective. The lack of lawyers conversant with usages of the old system was the most important factor in their abandonment. Although American frontier assemblies did not limit legislative and constitutional debate on legal matters to lawyer-delegates, nonlawyers tended to defer to their professional colleagues in matters of detail and drafting.

In many instances the persistence of old rules of law on the Hispanic frontier resulted from the influence exerted by a few men at a crucial time in the formulation of written law. Once enacted, a rule's longevity depended on the ability of knowledgeable professionals to maintain it. Without lawyers among the Anglo-American settlers in Texas during the 1820s and '30s, a familiarity with Spanish rules and their consequent transmission by legislation would not have occurred. Elsewhere in the West where there were no lawyers familiar with Spanish legal concepts, very few rules of the old system survived.

The degree of legal mix that results from a convergence of disparate legal doctrines depends to a large degree on cultural interchange. But in most regions the new settlers had neither the occasion nor the incentive to learn prevailing legal customs. Newly arrived lawyers enacted laws to suit the concerns of the new Anglo-American population before any cultural melding could occur.

Finally, during the crucial period of adjustment between legal systems most members of the higher judiciary along the frontier had received their legal training in the older American states. Thus, even where Spanish legal norms were legislatively perpetuated, judicial interpretation almost inevitably Anglicized their terms. Other Hispanic institutions perished as a consequence of their incompatibility with Anglo-American institutions.

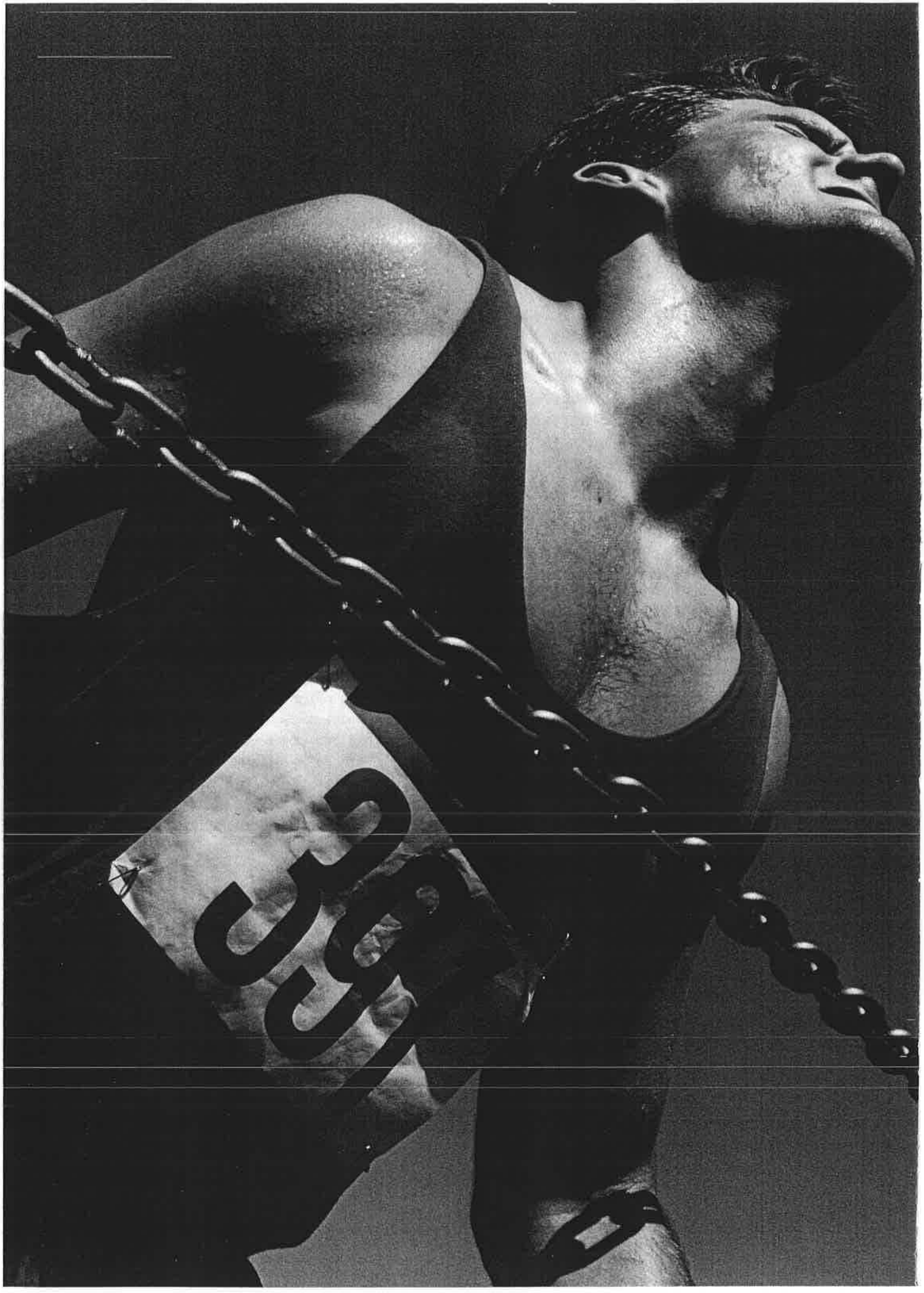
Conclusion

The changes of sovereignty, coupled with the great influx of Anglo-American settlers, led to a rapid adoption of Anglo-American law across the frontier region. As a result of reception statutes enacted by the territorial legislatures, Anglo-American law virtually replaced existing Spanish law except as specifically provided by contrary legislation. With the exception of Louisiana, which did not adopt a reception statute, surviving Spanish law was generally the result of codification of rules customarily used in a territory prior to the change of sovereignty. Although Spanish legal norms persisted to a certain extent in land titles, family law, and civil procedure, the primary area of retention of Spanish law was succession, including the law of marital property.

The territories in which Spanish law prevailed to any degree (Louisiana, Texas, and New Mexico) were different from the rest in having a relatively long-standing European population that had developed a sufficient understanding and appreciation of the law to make it a part of their lives. In Louisiana and Texas, the presence of legal professionals in the region prior to changes in sovereignty greatly promoted the retention of Spanish rules and institutions.

Though it may not seem so to those of us who practice in a highly law-oriented society, law is fragile when left to care for itself. Without the nurturing of lawyers and judges trained in its peculiar ways and rules, law withers and dies. Left untended, the law soon passes out of mind. Thus, much of Spanish law disappeared from the old American frontier.

Professor McKnight is the Larry and Jane Harlan Faculty Fellow and Professor of Law at Southern Methodist University School of Law. He has written extensively on the Spanish legal influence on American jurisprudence and is completing a book, *Legal Persistence and Change*, which deals with the law of succession on the Hispanic frontier of North America. In 1988 Professor McKnight was named an Academico (honoris causa) of the Academia Mexicana de Derecho Internacional. He is an authority in the fields of legal history and family and marital property law.



AN ABSENCE OF GOOD FAITH

DEFINING A UNIVERSITY'S EDUCATIONAL OBLIGATION TO STUDENT-ATHLETES

In 1982 Kevin Ross enrolled at Westside Preparatory School, a private elementary school in Chicago, Illinois. As was true of other students, Kevin Ross enrolled at Westside to acquire basic educational skills such as reading and writing. Yet the path that led to Ross's enrollment at Westside differed markedly from that taken by Westside's other students. Kevin Ross enrolled at Westside after he had attended public schools in Kansas City for twelve years and Creighton University for four years.

By Timothy Davis

APPLICATION OF THE GOOD FAITH DOCTRINE COULD SERVE TO CLARIFY THE NATURE OF THE INSTITUTION'S OBLIGATION TO THE STUDENT-ATHLETE.

Ross attended Creighton University as a basketball scholarship student. He achieved a grade point average of only 0.54 during his last semester at Creighton. Not surprisingly, Ross left Creighton after his four years of scholarship eligibility without obtaining a degree. Indeed, he departed Creighton as a functional illiterate, unequipped to write a check or read a menu.

During his eight months of study at Westside, Ross improved his reading skills to the level of a high school senior. The story of Kevin Ross did not, however, end with his departure from Westside in 1983. After leaving Westside, he turned to a life of alcohol and drug abuse. According to Ross, nightmares concerning his experiences at Creighton and Westside led to a violent incident in 1987, during which he threw furniture and other items from the eighth floor of a Chicago hotel room and held police at bay for several hours. After this incident, Ross underwent psychiatric treatment for depression.

In 1989 attorneys for Ross filed a lawsuit alleging that Creighton had committed educational malpractice and breached the duty of good faith and fair dealing, which they asserted was implied in the express contract between the university and Ross.[1] According to Ross, the implied duty of good faith and fair dealing imposed an obligation on Creighton to provide him "a reasonable opportunity to obtain a meaningful [college] education" and degree.[2]

Kevin Ross's lawsuit draws attention to important social and legal issues confronting intercollegiate athletics today. These issues include the compromise of academic integrity and the exploitation of student-athletes. This article addresses these issues and examines how they impact the rights and obligations of student-athletes and the educational institutions they attend.

The Utility of Contract Law as a Means of Restoring Academic Integrity

The commercialization of college sports has reached remarkably high levels over the past few years. One consequence of this increased commercialization is pressure on colleges to produce winning teams. This pressure in turn increases the competition between colleges and universities for the best student-athletes. The cycle is completed when this competition leads to ethical and academic abuses. Traditional contract doctrine can function indirectly to help restore academic integrity to intercollegiate athletics. This restoration begins by recognizing the reasonable expectations that flow out of the contractual relationship between a student-athlete and the educational institution. In this context, the good faith doctrine represents the specific mechanism by which courts should define the educational duty that colleges and universities owe to student-athletes.

The Express Contractual Relationship Between Student-Athletes and Postsecondary Institutions

Although the relationship between the student-athlete and the university escapes easy definition, most courts and commentators consider the relationship contractual in nature.[3] The express contractual relationship between the student-athlete and the university arises out of the Letter of Intent, the Statement of Financial Assistance, and various other university publications such as bulletins and catalogues. Student-athletes are required to comply with the rules and regulations of the particular institution, athletic conference, and the athletic association. The student-athlete also promises to remain academically eligible and to participate in the institution's athletic program.

While this express contract specifically delineates the student-athlete's contractual obligations, the duties of the college or university remain virtually undisclosed. The only obligation that the contract documents specifically impose upon the institution concerns the student-athlete's financial assistance. Although the contract documents suggest an educational component to this relationship, the contours of this aspect of the relationship remain unclear. Application of the good faith doctrine could serve to clarify the nature of the institution's obligation to the student-athlete.

The Implied Duty of Good Faith

The concept that every contract has an implied duty of good faith and fair dealing is an integral part of the American law of contracts.[4] Yet, despite its wide-

CONTRARY TO THE NEGATIVE STEREOTYPES, MOST STUDENT-ATHLETES ENTER COLLEGE WITH THE DESIRE TO SUCCEED ACADEMICALLY AND TO EARN A DEGREE.

spread acceptance, the duty of good faith defies easy conceptualization. Professor Summers postulated that by excluding conduct exemplifying bad faith, the good faith doctrine functions as a tool for enforcing what he termed "the unspecified 'inner logic'" of a transaction "when custom and usage are silent and when the true basis for implying a promise is that good faith requires as much."[5] Professor Burton has formulated an economic conceptualization of the good faith obligation.[6] He has observed that when the express terms of the contract are either unclear or omitted, one party may have the power to determine or control its performance obligation.[7] According to Professor Burton, good faith performance occurs when the party with discretion pursues any purpose consistent with the opportunities the parties, at the time they contracted, reasonably contemplated to be preserved.[8] Thus, under Professor Burton's formulation of good faith, a party who uses this discretion to recapture opportunities surrendered at the time of contracting performs in bad faith.[9]

Notwithstanding these different conceptualizations of the good faith doctrine, commentators hold similar views with respect to general precepts of the doctrine. Almost all view the concept as a mechanism to prevent one party from engaging in conduct that undermines the spirit of the bargain, either by trying to actualize opportunities implicitly surrendered at the time of contract formation or by unfairly preventing the other party from actualizing the gains reasonably contemplated at the time of contract formation.[10] The doctrine thus protects and promotes the contracting parties' expectations by implying into the contract a duty to cooperate, which goes beyond, but is consistent with, the express terms of the contract.

Applying the Good Faith Doctrine to the Student-Athlete/University Relationship

Implying a duty to provide an educational opportunity to student-athletes. The good faith doctrine provides a means to imply an obligation that the university provide an educational opportunity to student-athletes. Student-athletes enter postsecondary institutions with the desire and expectation that they will participate in intercollegiate athletic competition. Contrary to the negative stereotypes, however, most student-athletes also enter college with the concomitant desire to succeed academically and to earn a degree. Consequently, institutions deny student-athletes the full value they expect to derive from the transaction when they refuse to provide them with an educational opportunity. By diminishing the contract's value, the institution does not merely frustrate, but actually defeats the student-athlete's reasonable expectations. Thus, defining the university's educational obligation beyond the commitment to provide financial aid serves to protect the reasonable expectations of student-athletes.

The primary function of any educational institution is to educate its students. The implied duty to provide an educational opportunity comports with this function. Moreover, the expectation that an institution will undertake efforts to enable the student-athlete to obtain a substantively meaningful educational opportunity goes to the heart of the university's bargain with the student-athlete. In this sense, the relationship is one "instinct"[11] with an educational commitment by the institution to the student-athlete. An implied contractual obligation that forces a college or university to provide an educational opportunity to a student-athlete merely requires the institution to act faithfully with respect to the "agreed common purpose" of the relationship.[12]

Public policy considerations. Public policy considerations also support employing the good faith performance doctrine as a device to define an institution's contractual obligations to its student-athletes. These public policy factors become apparent in the context of *Ross v. Creighton University*, where the court relied upon policy arguments to justify its refusal to employ the good faith doctrine.[13]

Academic abstention. The *Ross* court concluded that because of the subjective nature of the educational process, Illinois would not recognize a cause of action for educational malpractice.[14] The court's stance reflects the concept of academic abstention. The academic abstention doctrine arises from the notion that because of their expertise in educational matters, faculties and governing bodies of educational institutions should be afforded considerable discretion.[15]

WHEN THE CONDUCT OF AN INSTITUTION OBSTRUCTS A STUDENT-ATHLETE'S ACCESS TO A MEANINGFUL EDUCATIONAL OPPORTUNITY, IT EVADES THE SPIRIT OF THE BARGAIN.

The relationship between the student-athlete and the university, however, is not purely academic. The obligations imposed upon student-athletes, coupled with the benefits that universities derive from their participation in intercollegiate athletics, have led some commentators to conclude that the student-athlete is an employee of the university.[16] Adherence to the doctrine is unjustified because courts are not being called upon to determine matters of academic freedom, but to interpret the terms of an express contract.

The potential for unlimited liability. In *Ross* the court expressed concern that the subjective nature of a duty to educate could expose educational institutions to unlimited liability.[17] Yet characterizing the obligation as a duty to "educate" is not only inaccurate, but suggests that institutions would guarantee a student-athlete's academic success. The obligation is more appropriately characterized as a duty to "provide an educational opportunity," and it merely requires that the institution provide a student-athlete with a reasonable opportunity to succeed academically—not a guarantee of academic success. The scope of this obligation can be defined to protect the interests of both the student-athlete and the institution.

Limiting the duty to student-athletes. The *Ross* court also questioned the propriety of creating a duty that benefits student-athletes but not other college students.[18] The student-athlete's unique relationship with the institution, however, justifies the greater protection. The relationship between the university and lay student[19] arises mainly from an implied contract. In contrast, the student-athlete and the university base their relationship primarily upon an express contract. The terms of this express contract impose obligations on the student-athlete that exceed those imposed upon the lay student.

In addition, the contrast between the college experiences of student-athletes and lay students justifies a cause of action that protects the interests of student-athletes, but not necessarily the latter. Because of the dynamics of the recruiting process, a relationship of trust and dependence often develops that is not present in the relationship between lay students and universities. The importance of this relationship of trust and dependence extends beyond the influence on a student-athlete's choice of institution. The athletic department may dominate every aspect of the student-athlete's college career, including academic decisions. An athletic department often devises an academic program for a student-athlete that avoids intellectually challenging courses. Thus the intimate and pervasive involvement of athletic departments in decisions that significantly impact a student-athlete's academic success justifies creating a duty that may not extend to other students.

Defining the Duty to Provide an Educational Opportunity

The boundaries of the duty to provide an educational opportunity must be determined in light of the intentions, interests, and expectations of student-athletes and the educational institutions they attend. An institution's obligation, however, is to provide an educational opportunity, not to educate the student-athlete. Characterizing the obligation as a duty to educate creates the risk of subjectivity to which the court in *Ross* alluded.[20] Whether a student-athlete receives a meaningful education depends in large part upon the student's desire and initiative. Because of such factors, by implying a duty to educate courts would impose an obligation on institutions to obtain results that are outside their control.

In contrast, characterizing the obligation as a duty to provide an educational opportunity renders it capable of objective evaluation. The critical inquiry that flows from this characterization is whether an institution engages in conduct that enables a student-athlete to obtain substantive educational benefits. When the conduct of an institution obstructs a student-athlete's access to a meaningful educational opportunity, it evades the spirit of the bargain. This obstruction translates into bad faith behavior.

Courts must examine the circumstances surrounding each relationship between a student-athlete and an educational institution to determine if that institution has engaged in improper conduct toward the student-athlete. Nevertheless, conduct that will in most cases tend to defeat a student-athlete's

reasonable expectations and thereby deprive the student of the essence of the bargain would include: (1) failing to provide meaningful tutorial and remedial assistance to a student-athlete with a marginal academic record; (2) providing academic counseling that encourages a student-athlete to undertake a program of study that, while it maintains academic eligibility, lacks academic merit; (3) failing to provide sufficient study time; (4) failing to monitor a student-athlete's academic performance and progress towards graduation; and (5) diluting academic standards so that a student-athlete can maintain athletic eligibility.

Conclusion

Attending college presents an opportunity for student-athletes to mature intellectually and athletically. Yet, for many student-athletes, the opportunities for growth and maturation are restricted to the playing field. If colleges and universities adhere to the notion that a student-athlete remains a student, the law must acknowledge that an academic institution's obligation to student-athletes extends beyond fostering their athletic development. The good faith doctrine provides a mechanism by which courts can recognize the educational component of an institution's obligation to its student-athletes. Employing the good faith doctrine to define the institution's obligation to provide an educational opportunity to student-athletes not only promotes and protects the expectations of the parties, but enables student-athletes to partake of the many benefits a college education has to offer.

Postscript

On March 2, 1992, the Seventh Circuit issued its decision in *Ross v. Creighton University.*[21] Relying on the policy justifications articulated by the lower court, the appeals court concluded that the Illinois Supreme Court would not recognize the tort of educational malpractice. The court also refused to recognize a breach of contract action that challenges the adequacy of the educational instruction since it merely recasts an educational malpractice suit. The court reasoned, however, that a justiciable contract controversy exists where the essence of the complaint is the defendant's failure to honor an "identifiable contractual promise."[22] Moreover, a university's failure to provide a student-athlete with any "real access to its academic curriculum"[23] presents a cognizable breach of contract claim. The court remanded the matter for consideration of this issue.[24] Shortly thereafter, Creighton University agreed to pay Ross $30,000 to settle the dispute.

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[1] *Ross v. Creighton Univ.*, 740 F. Supp. 1319, 1322-23 (N.D. Ill. 1990).
[2] *Id.* at 1323.
[3] *See, e.g, id.* at 1330-32; *Colorado Seminary Univ. v. NCAA*, 417 F. Supp. 885, 895 (D. Colo. 1976), *aff'd*, 570 F.2d 320 (10th Cir. 1978); Cozzillio, *The Athletic Scholarship and the College National Letter of Intent: A Contract by Any Other Name*, 35 Wayne L. Rev. 1275, 1282-83 (1989).
[4] *See, e.g.*, Burton, *Breach of Contract and the Common Law Duty to Perform in Good Faith*, 94 Harv. L. Rev. 369, 369 (1980); Summers, *"Good Faith" in General Contract Law and the Sales Provisions of the Uniform Commercial Code*, 54 Va. L. Rev. 195, 195 (1968).
[5] Summers, *supra* note 4, at 199.
[6] *See* Burton, *supra* note 4, at 371; Burton, *More on Good Faith Performance of a Contract: A Reply to Professor Summers*, 69 Iowa L. Rev. 497, 500-01 (1984) [hereinafter Burton, *More on Good Faith*].
[7] Burton, *More on Good Faith, supra* note 6, at 501.
[8] *Id.* at 500.
[9] *Id.*
[10] *See* C. Knapp & N. Crystal, *Problems in Contract Law* 377 (1987); *see also* Burton, *More on Good Faith, supra* note 6, at 500-01; Farnsworth, *Good Faith Performance and Commercial Reasonableness Under the Uniform Commercial Code*, 30 U. Chi. L. Rev. 666, 669 (1963).
[11] *Tymshare, Inc. v. Covell*, 727 F.2d 1145, 1152 (D.C. Cir. 1984) (quoting *Wood v. Lucy, Lady Duff-Gordon*, 222 N.Y. 88, 91, 118 N.E. 214, 214 (1917)).
[12] *See Restatement (Second) of Contracts* § 205 comment a (1979).
[13] 740 F. Supp. at 1332.
[14] *Id.* at 1328.
[15] *See* Latourette & King, *Judicial Intervention in the Student-University Relationship: Due Process and Contract Theories*, 65 U. Det. L. Rev. 199, 201 (1988); Note, *Judicial Deference to University Decisions Not to Grant Degrees, Certificates, and Credit—The Fiduciary Alternative*, 40 Syracuse L. Rev. 837, 848 (1989).
[16] *See, e.g.*, Goldman, *Sports and Antitrust: Should College Students Be Paid to Play?*, 65 Notre Dame L. Rev. 206 (1990); Yasser, *Are Scholarship Athletes at Big-Time Programs Really University Employees?—You Bet They Are!*, 9 Black L.J. 65 (1984).
[17] 740 F. Supp. at 1328-29.
[18] *Id.* at 1330.
[19] "Lay student" refers to college students who do not participate in intercollegiate athletics.
[20] *See Ross*, 740 F. Supp. at 1330.
[21] 957 F.2d 410 (7th Cir. 1992).
[22] *Id.* at 417.
[23] *Id.*
[24] *Id.*

Pro Bono Publico

"The great wish of some is to avenge themselves on some particular enemy, the great wish of others to save their own pocket. Slow in assembling, they devote a very small fraction of the time to the consideration of any public object, most of it to the prosecution of their own objects. Meanwhile each fancies that no harm will come of his neglect, that it is the business of somebody else to look after this or that for him; and so, by the same notion being entertained by all separately, the common cause imperceptibly decays."

While the Athenian historian Thucydides wrote these words in the context of his history of the Peloponnesian War in the fourth century B.C., they are as applicable 24 centuries later to the social ills of a United States at peace.

The decay of the nation's social fabric stems in large part from the inability of the economically, racially, and ethnically segregated to obtain relief. The under- or unemployed, the sick, those who speak little or no English, frequently are ill-equipped financially or educationally to deal with bureaucratic and legal systems that sometimes seem designed to frustrate rather than serve the common cause of humanity.

Thus, we should applaud the efforts of the many SMU law students who do not regard it "the business of somebody else" to help those unable to help themselves; who work pro bono for charitable organizations and in legal clinics in the poorest sections of Dallas and its neighboring communities. Since the law school has recently concluded that pro bono work should be a mandatory part of students' legal education, it seems appropriate to highlight students' pro bono commitment during the 1991-92 academic year.

Pro bono work is organized by the Pro Bono Committee of SMU's Student Bar Association and funded by the SBA. It is not connected with the school's legal clinics. Pro bono volunteers have helped in a number of programs designed to provide legal services for the poor and indigent: the South, East, and West Dallas Clinics, and the Garland Legal Clinic, all run by Legal Services of North Texas; four Homeless Shelter Clinics coordinated by the Dallas Bar Association; Lawyers Against Domestic Violence (LADV), a committee of the Dallas Bar Association; the Dallas Legal Hospice; Lawyers for Affordable Housing; the Dallas Tenants Association; and as interpreters and researchers for these and other pro bono programs. For organizational reasons, the Pro Bono Committee sought formal commitments only with programs that had salaried administrative staff with whom to coordinate activities.

Clinics

During the academic year from five to twelve students volunteered on Tuesday and Thursday nights to help at the South and East Dallas Clinics. The South Dallas Clinic serves a predominantly African-American, elderly, and inner city poor population, as well as people from suburban and rural sections of Red Oak, Pleasant Grove, Oak Cliff, Waxahachie, and other Dallas County communities. The East Dallas Clinic draws its clients from a mixed Asian, African-American, Hispanic, and Anglo population, including applicants from Mesquite, Garland, Richardson, and Plano. The West Dallas Clinic, centered in a primarily Spanish-speaking population, has regularly had at least one student interpreter attending its bi-monthly meetings. Two or three students who were Garland residents worked at the Garland Clinic on a fairly regular basis. All these clinics rely on the expertise of voluntary licensed attorneys, law clerks, paralegals, secretaries, and law students.

For the most part students helped with initial paperwork and screening interviews to determine

whether a potential client was financially eligible for the clinic's services. An applicant's income must not exceed federal poverty guidelines, and federal law prohibits clinics from handling either criminal or fee-generating cases. Legal services provided to eligible clients include counseling, negotiating, preparation of pleading forms, and representation in court. If a Dallas lawyer chooses to take a case on a pro bono basis, the lawyer may ask a student to assist in the case.

Homeless Shelter Clinics

These clinics—the Gateway Clinic, the Salvation Army Clinic, the Dallas Life Foundation Clinic, and the Austin Street Shelter Clinic—are relatively new. They meet once or twice a month. Law students volunteering at these clinics found that in many instances they were able to improve the clinics' efficiency. The homeless were better informed of the clinics' operating times, and the students received closer supervision from participating attorneys than in the beginning. Around eight students volunteered on a regular basis at these clinics.

Lawyers Against Domestic Violence (LADV)

This program provides legal services and advice to victims of family violence who cannot afford an attorney. It also provides a free legal "hotline" telephone counseling service for domestic violence victims. SMU law student volunteers were involved in research projects to rewrite the organization's operating manual and helped to draft grant requests for additional funding. In addition, LADV initiated a mentoring program whereby students worked one on one with attorneys on actual cases.

Dallas Legal Hospice

The Hospice represents people in the North Texas area who have tested HIV-position or have been diagnosed with AIDS or AIDS Related Complex and who cannot afford a lawyer. It also represents those who are terminally ill, many with advanced stages of cancer. The Hospice is staffed by two full-time lawyers and a full-time receptionist. More than two hundred attorneys in the Dallas area volunteer their time, primarily in the areas of estate planning, insurance, employment, housing, credit, and family law. They do not handle probate or criminal matters, nor do they represent people whose claims are based on discrimination against their sexual orientation.

The Dallas Legal Hospice is open from 9:00 a.m. to 6:00 p.m., Monday through Friday. In an emergency, the staff and volunteers also meet with clients at their home, hospital, hospice, or nursing home during regular hours and by evening and weekend appointments. Students were able to work at the Hospice at any time it was open. They were involved primarily as research assistants, in returning phone calls of prospective clients, and interviewing walk-in clients. During the academic year some 20 SMU law students volunteered at the Hospice on a regular basis or on special projects.

The Hospice represents people in the North Texas Area who have tested HIV-positive or have been diagnosed with AIDS or Aids Related Complex and who cannot afford a lawyer.

Lawyers for Affordable Housing and the Dallas Tenants Association

Lawyers for Affordable Housing is a new venture organized to perform real estate services for the indigent, except for landlord and tenant issues, which fall within the ambit of the Dallas Tenants Association. Three students worked on a continuing basis with Lawyers for Affordable Housing since its inception. The Dallas Tenants Association provided fewer opportunities for regular work, but had a number of special research projects that **Robert Doggett,** '90, made available to SMU students.

Pro Bono (continued)

Interpreters

This program has drawn many enthusiastic responses from law students and the wider community. The SMU Pro Bono Committee assembled a roster of about 30 students on call for translation and interpretation and a network of community volunteers for the same purpose. Most requests were for Spanish speakers, but calls also came in for Vietnamese, Chinese, and other language interpreters. The students provided translator services on a regular basis to all of the pro bono programs outlined above. Not only did they act as interpreters during interviews, they translated forms, documents, and informational brochures into Spanish. They were also available on an emergency basis to other pro bono groups or attorneys doing pro bono work.

Research

Still in a developmental stage is a project by which attorneys involved with a pro bono case can call and request individual research assistance. The hope is that the attorneys will closely guide and supervise these research assistants so that the cooperation is a productive one for both students and lawyers. Around six students initially participated in this project during the past academic year.

Clearly, organizing volunteers for these various pro bono programs required a major commitment of time and energy. Full credit must go to '92 graduate **Bonnie Barksdale,** chair of the SBA Pro Bono Committee, to co-chair of the committee **Kelly Harvey,** '92, and to clinic coordinators **Tiffany Haertling** and **Tom Perry** (both then 2Ls). Second-year law student **David Davis** acted as coordinator for the interpreter service. Between them, these student organizers logged approximately 40 hours a week on their pro bono work.

Volunteers came from all three law school classes and by the end of the spring semester an estimated 125 students had each contributed 3 to 4 hours once a week, once a month, or on a one-time-only basis. Many who had originally signed up for a single project became so enthusiastic that they enrolled as regular volunteers. And, since the needs of the poor and indigent do not gather neatly into academic semesters, many of the volunteers continued to work during the summer months.

For Barksdale, who has a masters degree in social work, the opportunity to help people by "pointing them in the right directions to solve their problems" was her motivation in creating such an active pro bono program. She sees pro bono as a growing experience for students and is positive that they get out of the program as much if not more than they give to it. As she noted in her introduction to the pro bono manual distributed to all students at the beginning of last fall's semester:

> Being a professional carries with it many responsibilities. In the eyes of many, one such responsibility is public service. Pro bono activities reflect the commitment that many professionals have toward public service. By participating in pro bono, SMU students acknowledge that they are committed to becoming active, caring professionals.

Until the law school implements its policy on pro bono work as part of the graduation requirement, the SBA is committed to assuring the continuation of pro bono activities. For the coming academic year they will be under the capable direction of **Tom Perry** (3L), 1992-93 chair of the Pro Bono Committee. ■ *JPB*

By participating in pro bono, SMU students acknowledge that they are committed to becoming active, caring, professionals.

Addiction and the Professions

"Chemical Dependency—The Professional's Responsibility to Each Other and to the Community" was the subject of the seventh daylong Conference of the Professions—Physicians, Lawyers, and Clergy. Close to 100 invited participants from the legal, medical, and theological communities listened to speakers and participated in discussion groups as they wrestled with one of the most pervasive and destructive problems in the country today.

The one fact that all speakers emphasized was that chemical dependency is a disease run rampant. Addiction is a substantial contributor to heart disease and cancer, the two major causes of death in this country, and is itself the third leading cause of death nationwide. More deaths occur from dependency on legal substances such as alcohol, tobacco, and prescription drugs than from illegal ones. As a consequence, the American Medical Association classifies drug addiction as a primary health issue. At the same time, medical researchers are becoming increasingly knowledgeable about the biochemical bases for addiction and have developed new drugs to treat addictive diseases.

Who is addicted? The speakers listed male professionals, female professionals, racial minorities, the poor and unemployed, university students, high school students, crack babies. In the medical, legal, and theological professions alcohol is the main dependency. The medical profession is also highly susceptible to prescription drug dependency. American Indian, Asian, and other minority communities are devastated by the introduction of drugs alien to their traditional cultures. Designer drugs in the streets are a spin-off of new medical technology published in readily available scientific journals. The campus culture in the 90s is little different from previous decades—frequent consumption of alcohol, marijuana, cocaine, and pills is still widespread. In many cities a 13-year-old finds it easier to get crack-cocaine than alcohol or tobacco. Exposure to drugs in utero is a critical problem.

The public's reaction to substance abuse tends to coalesce along sociological and cultural lines. In the white middle classes, drug abuse is likely to be accepted as a disease. When the lower classes and minorities abuse drugs, the addiction is treated as criminal. This selective application of disease model versus criminal model poses ethical and moral dilemmas. The speakers all agreed that chemical dependency must be regarded not as a criminal issue but as a public health issue. Delivery of recovery services must be equitable. Too often at present, clinics for the middle class are half empty while the number of public health clinics is grossly inadequate.

As the speakers pointed out, the criminal justice approach is not working and community action programs must step in to cure the social deprivation underlying drug abuse. The focus must be on rehabilitation of drug abusers, not prison. For those already in prison, medical, educational, and spiritual programs are needed inside the prisons to rehabilitate rather than recycle prisoners. The community must support treatment. While diagnosis of addiction is not a legal defense against criminal acts, it should be taken into account when assessing punishment or treatment. Certainly, in the speakers' view, legalization of drugs is not the answer to addiction. Alcohol is legal and the primary addictive substance. A complex disease does not respond to a simplistic solution.

Participants in the discussions stressed that for the professions the first hurdle is to break the institutional denial of addiction within their

Addiction (continued)

own ranks. The professions must foster an understanding that drug dependency is a disease and inform themselves on possible treatments. They must educate themselves about addictive diseases and what local addictive specialists are doing. Professionals must reach out within the profession and must focus on treatment, not punishment.

Early intervention is essential before the abuser becomes self-destructive and a danger to others. The speakers pointed to the extreme feeling of isolation of addicted professionals. They are terrified that their colleagues will find out; scared to turn themselves in for fear of losing their licenses to practice. Women are particularly vulnerable. They have higher stress levels merely on account of being women in male-dominated professions and tend to seek help later because of the stigma of "failing" as professionals.

Treatment must encompass all aspects of the addiction: chemical dependency, psychological dependency, spiritual malaise. Moral, legal, and medical issues are intertwined. Within the three professions represented at the conference, lawyers appear to be in the forefront of the battle against substance abuse. Lawyers Concerned for Lawyers now has representatives in every major law firm in Dallas. The Dallas Bar Association supports the Special Services Committee and the Dallas Peer Assistance Committee. The State Bar of Texas funds the Texas Lawyers Assistance Program, with a hotline and programs to raise consciousness within the profession. The last bastion to fall in recognizing addiction as a disease was the State Bar of Law Examiners. Now, however, it may no longer use treatment of addiction as a reason to refuse a license, and the concept of recovery is built into licensing and disciplinary procedures.

The Dallas County Medical Society has formed the Physicians Recovery Committee. Doctors seeking treatment come into this program under strict confidentiality. Usually they have been persuaded to contact the committee by concerned family, friends, colleagues, or pharmacists. In addition, the Texas Medical Association has formed the Committee for Physician Health and Rehabilitation.

Only the church does not have a formal organization to help its own addicted clergy. Apparently, in general, it does not admit that the "halo can fall" and views substance abuse as a moral and spiritual failure rather than a medical disease.

In help for the disenfranchised of the inner cities all professions are lacking. Individual members admit to being fearful of getting involved with a subculture they feel they cannot control. Relief and rehabilitation programs funded by the professions are few, and as already noted, public health clinics and treatment centers are overwhelmed by the needs of their clients.

Treatment must encompass all aspects of the addiction: chemical dependency, psychological dependency, spiritual malaise.

The conclusion of the conferees was that society is fundamentally flawed when it treats addiction as a health matter in one stratum of the population and as a criminal matter in another stratum. Addiction has no bias and the solution should be intervention and education, not criminal punishment. To cut funding for social programs for inner city schools in order to finance the building of more prisons, as happened in San Francisco, is a giant step backwards from the moral and practical solution.

Overall, what is needed is a coherent national strategy, not swayed by politics and fear but scientifically and clinically based. The professions have an obligation to be the leaders in advancing such a strategy.

The Conference on the Professions was hosted this year by the School of Law, with Dean Paul Rogers serving as chair of the planning committee. It was cosponsored by the Dallas Bar Association, the Dallas County Medical Society, SMU's School of Law and Perkins School of Theology, and the University of Texas Southwestern Medical Center at Dallas. Keynote speaker for the conference was Dr. David E. Smith, founder and medical director of the Haight Ashbury Free Clinics in San Francisco. Dr. Smith, research director of the Merritt Peralta Institute Chemical Dependency Recovery Hospital in Oakland, California, and associate clinical professor of occupational medicine and clinical toxicology at the University of California, San Francisco, is recognized as a national leader in the treatment of addictive disease. Response speakers were Dr. Michael J. Healy, Director of the Southwest Professionals' Recovery Program at Charter Hospital of Dallas, a certified alcoholism and drug abuse counselor, and a member of the Impaired Physicians' Committee of the Dallas County Medical Society and of the Texas Medical Association's Committee for Physical Health and Rehabilitation; Timothy W. Sorensen, Esq., of Dallas, an SMU law school graduate, past president of Dallas Lawyers Concerned for Lawyers, past chair of the Dallas Peer Assistance Committee, founding director of Texas Concerns for Lawyers, and the Dallas Bar Association's delegate to the ABA's Commission on Impaired Lawyers; John V. McShane, Esq., of Dallas, active in the Texas Lawyers' Assistance Program and Peer Assistance Committee of the Dallas Bar Association; Reverend Arris Don Wheaton, Sr., graduate of the Perkins School of Theology and founder of the Abundant Life I Am Ministries in Dallas, which assists the homeless in Dallas by developing programs to provide housing and counseling and thus help them return to the mainstream of society; and Dr. Ernest F. Bel, an Episcopal priest and Jungian analyst who maintains a practice in Dallas. ■ *JPB*

Keystone of a Just Society

"An extraordinarily distinguished proponent of justice," whose opinions have "remarkable substance and philosophy," is how Judge Hubert L. Will described Judge Irving L. Goldberg in his introduction to his lecture honoring Judge Goldberg. The theme of Judge Will's remarks lay in his concern that "we are forgetting that due process of law is the keystone of justice and the keystone of a just society."

Judge Will began by setting out six fundamental propositions in this regard: the quality of society is measured by how just it is; the quality of a society's system of justice depends on the society's recognition of due process; the highest quality of justice can be achieved only through as fair a trial as humanly possible; due process cannot be posed in absolute terms, but depends on the relative circumstances of each case; an important measure of a civilized society is how it protects the rights of individuals against those in power; and finally, the protection of due process requires the concern and active participation of every person.

As background to his plea for the revitalization of due process in the United States, Judge Will briefly reviewed the high and low periods of due process in the western world. Beginning in Ancient Egypt he quoted King Tutankhamen III's instructions to his chief justice: "Thou shalt act alike to all." And from an inscription on a tomb of the same period: "Be quiet while you listen to the words of the petitioner. Do not treat him impatiently. Wait until he has emptied his heart and told you of his griefs."

Judge Will's next stop was in Athens roughly 1000 years later. Here he introduced Draco, the severity of whose code is memorialized today in our use of "draconian" as a synonym for harshness. He also introduced Athenian statesman Solon, whose legacy in reforming Draco's code

Keystone (continued)

remains with us in the term "solon" to mean a wise lawgiver.

Moving on to the Roman Empire, Judge Will cited the Justinian Code of that time as a significant contribution to justice and to due process. In his code, the Emperor Justinian insisted that the result should never be exalted over due process: "By the interpretation of the laws, the penalty should rather be mitigated than increased in severity; it is better to permit the crime of the guilty person to go unpunished than to condemn one who is innocent." The Justinian Code also introduced the first speedy trial law: a criminal case had to be concluded within two years or the accused was to be discharged.

The fall of the Roman Empire and the onset of the Dark Ages was a black hole for due process, which did not surface again until 1215 and the Magna Carta. While that document attempted to codify fair procedure, albeit only between the king and his barons, the first written use of the phrase "due process of law" cannot be found until over 100 years later in an agreement signed by Edward III that no man should be imprisoned, disinherited, or put to death without due process of law. Unfortunately, the Star Chamber ascended over the principle of due process, which was not to reappear until 1699 in the Declaration of Rights, one of the two basic documents that are the background of the U.S. Bill of Rights.

Central as the Bill of Rights is to the national identity, in Judge Will's view the Bill of Rights did not have any real significance until the passage of the Fourteenth Amendment. That amendment laid the basis for the doctrine of incorporation under which the Supreme Court has incorporated the First, Fourth, Fifth, Sixth, and Eighth Amendments under the definition of due process of law. According to him, the zenith of due process in the history of civilization occurred in the United States during the first 65 or 70 years of this century when the Supreme Court expanded the concept of the Fifth Amendment to include *Miranda*. Since then, in Judge Will's opinion, due process has been severely circumscribed: the right to counsel has been eviscerated; warrantless searches have increased; coerced confessions may now constitute harmless error; mandatory sentencing ignores the moral guilt of the offender; police have increased powers to invade the privacy of individual citizens; and post-conviction

Judge Hubert L. Will greets Judge Irving L. Goldberg

proceedings may be barred for purely technical reasons.

As Judge Will pointed out, the proponents of restricting due process and the other guarantees of the Bill of Rights argue that such moves are necessary to reduce crime. Yet instead, crime is on the increase and we have the largest prison population in our history. Rather than restrict people's rights under the rubric of law and order, we need, according to Judge Will, to deal with the causes of crime: need and greed. The community must address the needs of its citizens, primarily in the areas of affordable health care and unemployment compensation. It must also solve the problem of greed, of the high profitability of engaging in illegal drug activity.

Judge Will called upon his audience to reverse this trend, to revitalize due process in the United States. While practicing lawyers are the obvious custodians of justice, due process can be achieved through other vehicles than the courts. The quest for due process must engage all members of the community: not only judges, but executives, legislators, administrators, and citizens generally. The collective concern must lie in the humanity of legal and regulatory procedures rather than in their economics.

Judge Will, Senior Judge of the United States District Court for the Northern District of Illinois, delivered this fourth annual Judge Irving L. Goldberg Lecture on campus early in the spring semester. The law clerks and friends of the Honorable Irving L. Goldberg, Senior Judge on the U.S. Court of Appeals for the 5th Circuit, established the lecture series in recognition of his extraordinary service on the bench and to the legal profession. ■ *JPB*

The Separation of Church and Self

Professor Stephen L. Carter, William Nelson Cromwell Professor of Law at Yale Law School, delivered the 14th annual Roy R. Ray Lecture at the law school. His topic: "The Separation of Church and Self."

Professor Carter posed the dilemma of the deeply religious person who has an equally strong desire to be a good citizen in a country that mandates the separation of church and state. How does a person balance personal religious beliefs with civic action that must be separated from such beliefs? Is it realistic to expect a religious person trying to change policies to present only secular reasons for the change? Or should one accept the fact that a person living a faith-guided life cannot set aside religious faith when trying to influence public policy?

Professor Carter explored the dilemma of the faith-guided person in five situations: abortion; the teaching of evolution versus scientific creationism; religious use of drugs; the St. Patrick's Day Parade in New York City; and the Clarence Thomas confirmation hearings. In the first two situations the tension between religious and secular beliefs is obvious. In each case, the question is whether people with firm religious convictions on the subject may impose those convictions on others who believe that the doctrine of the separation of church and state gives them the right to order their lives free from such religious interference. Must the dictates of religious belief be cast in secular terms in order to satisfy the first amendment?

With regard to the use of drugs as an integral and sacred part of religious ceremony, the argument reverses itself. Does the secular person have the right to impose criminal sanctions on those who view the use of drugs as an essential component of their free exercise of religion. And in a related matter, should a person have the right to refuse to work on certain days for religious reasons, or should the employer have the right to fire the person for refusing to work because of religious belief?

The St. Patrick's Day Parade poses a somewhat different question: Does a religious group—the Hibernians—have the right to bar from its public parade those—gays and lesbians—whose practices it finds abhorrent? Or does the state have the duty to mandate that a public parade not be subject to the discriminatory rules of the group sponsoring the parade?

Professor Carter categorized the Clarence Thomas hearings as akin to a 13th century trial in that the proceedings resembled more a trial by ordeal than a dispassionate attempt to determine who was telling the truth. From there Professor Carter moved to a discussion of contrasting behavior under oath. The modern legal system, with its direct and cross examination of witnesses, is premised on the belief that people will lie under oath. Suppose, however, a judge or jury believes that a witness's religious beliefs will prevent that witness from lying. Does the judge or jury violate the doctrine of the separation of church and state by taking religious belief into account in judging the credibility of a witness?

It is neither possible nor desirable

for a person to disassociate religious beliefs from public action as a citizen.

Separation (continued)

Professor Carter's conclusion was that it is neither possible nor desirable for a person to dissociate religious beliefs from public action as a citizen. The civil rights movement, for example, was essentially a religious rather than a secular movement. The separation of church and state should not mean the separation of church and self. Religious belief or the absence thereof should not be the determining factor of a government's treatment of its citizens; neither the religious nor the secular has the right to win, only the right to equal treatment. Indeed, in Professor Carter's view all citizens need an intermediate institution such as the church to prevent the federal government from imposing its will on all. Religion is often at its best when it is opposing government denial of personal sovereignty; when it organizes civil resistance to manifest personal injustice; when it provides sanctuary for the oppressed; when it refuses to accept government omnipotence over the lives of citizens.

To Professor Carter it is important that religious institutions maintain a sphere of autonomy. Free exercise of religion is as consequential as the right to be free from religious coercion. He suggested that it is vital that religion remain independent as a balancing force of moral criticism. For if religion is removed from people's lives, the vacuum will be filled by another ideology. The solution is for neither the state to dominate religion nor religion to drive the state.

Steven L. Carter, speaker

Free exercise of religion is as consequential as the right to be free from religious coercion.

Professor Stephen L. Carter was educated at Stanford University and Yale Law School. After receiving his law degree he clerked for Judge Spottswood Robinson of the U.S. Court of Appeals for the D.C. Circuit and for Justice Thurgood Marshall of the United States Supreme Court. In 1982, after a brief time in practice, Professor Carter joined the law faculty at Yale, where he teaches constitutional law, contracts, and intellectual property. An active, creative, and independently minded scholar, his book *Reflections of an Affirmative Action Baby* has been widely reviewed and read.

The Roy R. Ray Lecture series is funded through the generosity of Professor Emeritus Roy R. Ray, who joined the faculty of SMU law school in 1929, four years after its founding. He finally retired from active teaching 41 years later, and is now approaching his 90th birthday. Unfortunately, his health prevented him from attending this year's lecture in his honor. ■ *JPB*

Business Reorganization and Chapter 11

Harvey R. Miller, senior partner of Weil, Gotshal & Manges in New York, spoke to the spring meeting of the law school's Corporate Counsel's Council on "Is Bankruptcy a Real Tactical Alternative for Corporate Management?" In his view, a great tide of financial crisis is sweeping America. Too many industries in goods, services, and construction are unable to utilize their capacities adequately, face cut-throat competition, and struggle to service huge debts. Many economists project that the economy will continue to underperform throughout the mid-1990s.

In this context an increasing number of corporations are looking to Chapter 11 as a practical means of business reorganization. At the same time, labor unions perceive reorganization under Chapter 11 as a maneuver by which corporate sharks can avoid their financial and contractual obligations, particularly collective bargaining agreements. What, then, is the middle ground? According to Mr. Miller, "in a credit intensive society you must have a system which relieves pressure and enables stabilization and preservation of values."

The need for debt restructuring has its foundation in the frustration of expectations of payment and performance in accordance with the terms of the original understandings. The goal of debt restructuring is to readjust these expectations to conform with reality. Illustrated by references to major companies either in the midst of or emerging from Chapter 11 proceedings—Johns Manville, Continental Airlines, Texaco, Federated/Allied, Drexel Burnham Lambert, Olympia & York, R.H. Macy—the thrust of Mr. Miller's discussion was whether bankruptcy reorganization is the best way to achieve that goal. At the same time he highlighted the extraordinary complexities of a major reorganization that may involve thousands of junk bond holders, foreign banks, and bank syndicates, as well as suppliers and labor unions. Added complications are the amounts, different strata, and different characteristics of debt, along with complex types of financing, particularly in the real estate field.

While no corporate management goes into a Chapter 11 proceeding with pleasure, a large part of the stigma attached to being in such a position has disappeared. A Chapter 11 proceeding gives corporate management breathing space to get to grips with its problem. Nevertheless, it is no panacea.

Harvey R. Miller, speaker

Before filing a Chapter 11 case, it is essential to assess the company's problem: Is it terminal? Or is it transitional? The consequences of a Chapter 11 proceeding are serious and need to be carefully evaluated. First, employee trauma must be acknowledged and dealt with. While maintaining employee morale and productivity is not a legal issue, it is nevertheless a major factor in the eventual success of a reorganization. Then management, including the board of directors, once it files for Chapter 11 protection, surrenders a portion of its corporate control. Now a bankruptcy judge is involved in the running of the

Business (continued)

company. Each bankruptcy judge is different; some are activist, some simply react to developments. The bankruptcy court must approve every transaction considered to be outside the ordinary course of business. Finally, debtors-in-possession and creditors' committees have conflicting philosophies on how to handle the situation. Debtors view Chapter 11 as an opportunity to reorganize and rehabilitate the company. Creditors feel that the company filing under Chapter 11 has the obligation to find a purchaser that will satisfy their claims.

Because of the tensions between the various parties involved in a Chapter 11 proceeding, Congress is experiencing an upsurge in special interest legislation cutting into the options available under Chapter 11. Mr. Miller predicted that within the next few years Congress would be holding hearings on the scope of Chapter 11. At the same time, the United Kingdom is exploring the possibility of introducing legislation along the lines of Chapter 11 so that financially troubled small and medium-sized businesses, particularly in the economically depressed northern industrial region, can be rehabilitated rather than automatically liquidated and their employees thrown out of work.

In conclusion, Mr. Miller suggested that while Chapter 11 is a valuable tool, it should be used sparingly and only after exhaustive preliminary analysis and planning. If a company can negotiate a restructuring outside of Chapter 11 it should do so. In that way, the company will be able to devise a reorganization free of the restraints of the statute and its attendant legal minutiae.

Harvey Miller is the co-author of *A Practical Guide to the Bankruptcy Reform Act* (1979), and a contributing editor of *Collier on Bankruptcy* (15th edition). He lectures frequently at bankruptcy institutes and continuing legal education programs. Major cases with which he has been involved include Texaco Inc.; R.H. Macy & Co., Inc.; Federated Department Stores, Inc., et al.; Eastern Air Lines, Inc.; Continental Airlines Corporation; Best Products Co., Inc; Western Company of North America; Itel Corporation; Zale Corporation; Global Marine Corporation; Johns-Manville Sales Corporation, et al.; and W.T. Grant Company. The Dallas ofice of Weil, Gotshal & Manges sponsored the luncheon meeting. ■ *JPB*

Law and Economics

The School of Law and the Department of Economics, with the co-sponsorship of the Dallas law firm of Johnson and Gibbs, presented two lectures on law and economics during the spring semester. In the first, Richard A. Epstein, James Parker Hall Distinguished Service Professor of Law at the University of Chicago Law School, discussed "Civil Rights Enforcement in the Workplace."

Professor Epstein is a leading theorist in law and economics with views generally characterized as conservative or libertarian. A lively and forceful speaker, he drew his talk from his most recent book, *Forbidden Grounds: The Case Against Employment Discrimination Laws* (1992). An earlier book, *Takings: Private Property and the Power of Eminent Domain* (1985), has received considerable attention from both legal and economics scholars and has been the topic of favorable editorials in *The Wall Street Journal*. It was also discussed during the confirmation hearings for Supreme Court Justice Clarence Thomas.

The second lecturer, David D. Friedman, is the Olin Faculty Fellow in Law and Economics also at the University of Chicago Law School. Professor Friedman presented a paper entitled "Hanged for a Sheep—The Economics of Marginal Deterrence." In 1971 Professor Friedman earned a Ph.D. in physics from the University of Chicago. Since then he has shifted his interest towards law and economics and has written two books, *Price Theory: An Intermediate Text* (1986) and *The Machinery of Freedom: Guide to a Radical Capitalism* (2d ed. 1989), and numerous articles, book chapters, reviews, and comments. He currently directs much of his attention toward the area of optimal punishments. ■ *JPB*

Sister Law School Program — Poland

For a week in April, SMU School of Law was host to Dr. Leszek Leszczyński, vice-dean of the Faculty of Law of Maria Curie-Skłodowska University in Lublin, Poland. Dr. Leszczyński came to the law school under the auspices of the ABA Section of International Law and Practice's Central and East European Law Initiative (CEELI).

CEELI was established to assist Eastern European countries in the formulation of legal infrastructures that will permit lasting legal, political, and economic reform. Central to these reforms are the efforts of professors and recent graduates of the countries' law schools to draft the necessary legislation. Yet they are ill-equipped for such a task. Such subjects as commercial law, bankruptcy, securities law, corporate law, and antitrust were irrelevant in a centrally planned economy. The rule of law doctrine had no place in the Marxist system of law.

A part of the CEELI project, therefore, has been to establish a sister law school program through which deans from Eastern European law schools visit U.S. law schools for an introduction to all facets of American legal education: teaching methods, clinical programs, computer technology, law library development, student-run law journals, administration of the law school, admissions procedures, placement offices, and fund-raising techniques. The Eastern European law deans meet with law school faculty, librarians, administrative staff, and students, as well as with practicing attorneys, judges, and local and state bar officials. The intent of the project is that by this in-depth exposure of Eastern European law school deans to selected U.S. law schools, the Eastern European and U.S. schools will establish a mutually beneficial relationship. The Eastern European schools will have access to the knowledge they need to reform their teaching methods and establish a new curriculum; the U.S. schools will gain insight into the dynamic legislative forces at work in Eastern Europe.

Dr. Leszczyński faced a grueling itinerary on his arrival at SMU, the second of his three-week, three-school schedule. He met with faculty and attended several classes; with student law review editors and officers of the Student Bar Association; with Underwood law librarians; and with the dean, the associate dean for academic affairs and clinical education, and the directors of admission and placement. He attended a session at a Dallas County district court and visited one of Dallas's major law firms. On several evenings he was the guest of faculty members in their homes.

1991-92 *TIL* Senior Editor Tom Yoxall presents copies of *The International Lawyer* to Dean Leszczyński.

The editors of *The International Lawyer,* the flagship publication of the ABA Section of International Law and Practice that has been resident at the law school since 1986, were involved in Dr. Leszczyński's visit from beginning to end. On the day of his arrival they drove him to Fort Worth to visit the Amon Carter and Kimbell art museums. They and the International Law Society sponsored a reception for him at which the outgoing *TIL* senior student editor presented him with recent issues of *The International Lawyer.* And on his last evening, to ensure that he did not leave Dallas without at least one stereotypical Texas experience, two *TIL* student editors took him to the Mesquite Rodeo.

A man of scholarship, energy, and intense curiosity, Dr. Leszczyński left those whom he met at SMU awed by the immensity of the task he and his fellow law school deans face as they remake their legislative and legal educational systems. The sister law school venture is a critical component to the success of their reforms. SMU School of Law, with its long-established graduate degree program in international and comparative law for foreign law students, is an ideal participant. ■ *JPB*

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MR. JAMES LACORTE
MR. R. KNOX TYSON
MR. JACK SPILLMAN
MR. LARRY WALL
MR. JOE WHISTLER
MR. NATHAN WHITE
CLASS OF 1981-1982
MR. JOHN CREUZOT
MS. DAWN MOORE
MS. TRACY THOMPSON

SMU Estate Planning Council

Chair:

Gus H. Comiskey, Jr., '62

Comiskey Kaufman, Inc.

Members:

John R. Bauer, '66 LL.B.

Bauer, Rentzel, Millard & Hardwick

Thomas H. Cantrill, '70

Jenkens & Gilchrist

Edwin R. Daniels

Integrated Financial of Texas

L. Henry Gissel, Jr., '61 LL.B.

Fulbright & Jaworski

Kathryn G. Henkel

Hughes & Luce

Michael D. Huston

Dean Witter Reynolds, Inc.

David M. Kellogg

Continental Bank of Chicago

John J. Klein

Jackson & Walker

David E. Lajole

Coopers and Lybrand

Estate Planning

In April the SMU Estate Planning Council conducted two seminars on financial and estate planning for SMU graduates and friends. One of the seminar presenters was Gus Comiskey, chair of the SMU Estate Planning Council. Gus is a 1962 SMU graduate who also holds an MBA from the Wharton School, University of Pennsylvania. He is president of Comiskey Kaufman, Inc., a Houston-based firm specializing in executive benefits, consulting, and wealth-transfer planning.

Q. What is the SMU Estate Planning Council, and what was the idea behind offering these estate-planning seminars to SMU graduates?

A. The Council is a group of SMU volunteers who are experts in the financial and estate-planning fields. Our membership includes estate-planning attorneys, among them SMU law school graduates **L. Henry Gissel, Jr.,** '61, a partner at Fulbright & Jaworski in Houston and **John R. Bauer,** '66, a partner at the Dallas firm of Bauer, Rentzel, Millard & Hardwick, a CPA, investment experts, and life insurance professsionals. Our role is tó lend advice and technical assistance to SMU and its office of planned giving. We also serve as an educational resource to the planned giving office by showing individuals how a solid estate plan can preserve more of their estate for their heirs and for charity.

Q. What are some of the major estate planning concerns of individuals today?

A. Individual situations vary, of course, but most of the people we work with are primarily concerned about making certain that their estates are distributed to the beneficiaries of their choice, in the most straightforward manner possible, and with a minimum of delays and unnecessary costs. They are also concerned about keeping the government's share of their estates as low as possible. We are also finding, in recent years, that more and more of our clients are worried about leaving their children too much money and are looking for ways to cap their children's inheritances and use the rest of their estates to benefit the community.

Q. With our aging population, there will be a tremendous amount of wealth transferred to younger generations over the next 20 years, as people now in their 60s and 70s start passing wealth to their children, who are now in their 40s and 50s. What opportunities are available as these estate plans begin to take shape?

A. There are many opportunities out there, but let me mention just a few of the most widely applicable ones. First, members of the older generation need to be sure they utilize the $600,000 unified credit exemption against estate and gift taxes, since we keep hearing that it may not be around much longer. The credit can be taken against either lifetime gift taxes or estate taxes at death, but there is tremendous leverage possible if you use it during lifetime.

Second, going back to what I said earlier, people need to take advantage of their ability to target the inheritance they would like to leave to members of their family. The targeted inheritance can be funded with assets owned outside of the estate, with the bulk of the estate itself passing to charity. The result is that the family is taken care of and charitable goals are met, all without estate-tax liabilities.

Finally, attention should be given to structuring bequests to children and grandchildren so that assets can be protected against claims of their creditors or in the event of divorce. This type of planning is necessary in order to make sure that the estate does not ultimately end up in the wrong hands.

Q. What are some of the most common estate-planning mistakes you or members of the Estate Planning Council encounter?

A. What we find most often are omissions, not errors. People have not done the wrong thing, they just have not done anything at all. The most serious omissions have to do with closely held family businesses. We often see situations where little or nothing has been done to ensure that ownership passes to the next generation of active family members in a workable manner.

Another omission we often see is a failure to take advantage of the opportunity to "generation skip" estate taxes, which can really eat up a family estate if you let the government get a bite each time a generation passes on.

Failure to keep life-insurance proceeds out of the taxable estate is still another common problem area. The insurance that is intended to provide liquidity for estate taxes actually compounds those taxes if

SMU's Charitable Gift Annuity Program

Although many people would like to make charitable gifts to the University, economic conditions prohibit them from giving away assets from which they derive regular income. The SMU Charitable Gift Annuity Program allows donors to make charitable gifts now and keep for themselves and their spouses an income for the rest of their lives. In many cases, the income which SMU will pay to the donors is more than the donors are currently earning from their investments. In addition to increasing retirement income, some of the other benefits are:

- a portion of the income will be tax free
- if funded with appreciated securities or property, the capital gains tax will be partially bypassed
- each gift annuity that is established with SMU qualifies the donor for an immediate charitable income-tax deduction based on the present value of the annuity

The payout rates in the SMU Charitable Gift Annuity Program are based on the age of the donor and whether the annuity extends for the life of the donor only or for the life of the donor and his or her spouse. The older the donor, the higher the payout rate.

BENEFITS OF A $10,000 GIFT ANNUITY

PAYABLE FOR THE LIFE OF THE DONOR ONLY

AGE(S)	RATE	ANNUITY	TAX FREE	DEDUCTION
60	7.0%	$700	$268	$3,548
65	7.3%	730	307	3,886
70	7.8%	780	365	4,203
75	8.5%	850	440	4,548
80	9.6%	960	543	4,889

PAYABLE FOR THE LIFE OF THE DONOR OR SPOUSE

AGE(S)	RATE	ANNUITY	TAX FREE	DEDUCTION
60-60	6.6%	$660	$238	$2,942
65-65	6.8%	680	273	3,214
70-70	7.1%	720	315	3,534
75-75	7.6%	760	375	3,856
80-80	8.3%	830	452	4,252

Note: Calculations are based on a 9 percent discount factor. The rates are somewhat lower if the annuity is payable for the duration of two lives – for instance, as long as either husband or wife is living.

the decedent owned it personally or if it is paid into the estate at death. Both of these problems should be avoided—and can be, with effective use of "dynasty trusts" and other planning techniques.

We also encounter situations where people are paralyzed in their planning by having a lot of low-yield, low-basis, appreciated property. There are many missed opportunities to use assets like that for very productive planning purposes.

Q. Many people are charitably motivated, but still unable to give away assets on which they depend for income. How are these people integrating charitable giving into their overall estate plans?

A. Charitable giving strategies are available that can increase a person's retirement income, bypass capital gains taxes, and provide immediate income tax deductions, in addition to benefiting worthwhile causes. Life-income gift approaches, like charitable remainder trusts, are becoming more popular. Charitable trusts are especially advantageous where you are dealing with the kind of highly appreciated loss-basis property I mentioned earlier. The trust can sell these assets without having to pay capital gains tax, so that the full value of the asset is now available to generate income, and eventually, to fulfill charitable objectives.

SMU has initiated a charitable gift annuity program that pays donors an income for life at rates higher than those offered on certificates of deposit and instruments of similar risk level. In addition, gift annuities provide an immediate tax deduction when they are set up and pay out income that is partially tax free.

The SMU Gift Annuity Chart provides an overview of the types of returns which participants receive.

Q. How can SMU law school and the Estate Planning Council assist graduates in identifying and meeting their estate planning goals, charitable and otherwise?

A. The director of development for the SMU law school and the director of Endowment and Planned Giving for the University will assist individuals in setting objectives, and work with them in arriving at the most tax-efficient ways to meet those objectives. The Estate Planning Council has the expertise to suggest options and assist in their implementation for individuals.

By offering programs like the April seminars, I hope we can encourage people to take advantage of the kinds of help available in this area. ■

Gus Comiskey

SMU has initiated a charitable gift annuity program that pays donors an income for life at rates higher than those offered on certificates of deposit and instruments of similar risk level. In addition, gift annuities provide an immediate tax deduction when they are set up and pay out income that is partially tax free.

For additional information on the types of services that may be provided, please contact Katherine L. Friend, Director of Development, SMU School of Law Development Office, at (214) 692-3341.

Marilyn Jeanne Johnson

Marilyn Jeanne Johnson Distinguished Law Faculty Fellowship Established

Dr. **Roger Stanley Johnson,** a 1991 graduate of the SMU School of Law, established the Law School's third distinguished law faculty fellowship in honor and memory of his wife of 39 years, Marilyn Jeanne Johnson. **The Marilyn Jeanne Johnson Distinguished Law Faculty Fellowship** recognizes nationally acclaimed legal scholars and outstanding teachers. The first recipient is Regis W. Campfield, a senior faculty member and nationally recognized expert on estate planning who has been on the SMU law school faculty since 1977.

Mrs. Johnson, a 1952 B.S. nursing graduate of the University of Minnesota, was a registered nurse with a certificate in public health. She worked as a school nurse in Minneapolis and as a floor nurse at Driscoll Children's Hospital in Corpus Christi after the Johnsons moved to Texas in 1963. She also worked with Dr. Johnson on the couple's medical missionary campaigns in Malaysia and the Cayman Islands, where she helped establish and fund a 12-bed hospital. Mrs. Johnson was an active civic volunteer, serving on the board of trustees of the Art Museum of South Texas and helping with the museum's fund-raising campaign.

Dr. Johnson earned a medical degree from the University of Minnesota in 1951 and practiced for more than 35 years. He was on the staff of Spohn Hospital in Corpus Christi as a trauma surgeon from 1963 to 1984. Following his distinguished medical career, Dr. Johnson entered SMU School of Law and graduated with the Class of 1991. ■

Vial, Hamilton, Koch & Knox Joins the Council for Excellence in the Study of Law

The Dallas law firm of Vial, Hamilton, Koch & Knox has become the 19th member of the Council for Excellence in the Study of Law by making an endowment gift to the school. The Council of Excellence consists of nationally recognized law firms in Dallas and Houston that have pledged their support to advance the school's position as one of the premier law schools in the country.

Dean Paul Rogers states, "We are extremely pleased to have Vial, Hamilton, Koch & Knox join our Council for Excellence. The firm's commitment enables the school to meet the ever-mounting challenges and needs associated with private, legal education."

So far, gifts and pledges made by council members to the School of Law total more than $1.5 million. Proceeds from the investment of the funds are used for such expenses as curriculum needs, student and faculty recruitment, graduate study programs, clinical education programs, and the Underwood Law Library. ■

Judge Sarah T. Hughes

Sarah T. Hughes Law Library Endowment Fund

Through the joint efforts of the SMU School of Law and the trustees of the Dallas Bar Foundation, the Sarah T. Hughes Law Library Endowment Fund has been established at the Underwood Law Library. A fundraising event hosted by Nero's Italian Restaurant in Dallas on February 23, 1992, marked the Campaign Kick-Off for the Hughes Fund.

The Sarah T. Hughes Law Library Endowment Fund creates a permanent endowment at the Underwood Law Library. The Hughes Fund honors the contributions Judge Hughes made as a jurist and a humanitarian. Income from the endowment will enhance Underwood Law Library's collection in the areas of human and civil rights. ■

Executive Board Spring Meeting

(L to R) Professor Ellen Solender visits with Law School Executive Board members Rona Mears, '82, a partner in the Dallas office of Haynes and Boone, and Barbara Lynn, '76, a partner in the Dallas firm of Carrington, Coleman, Sloman and Blumenthal, following the spring meeting of the Law School Executive Board.

Carl Wesley Summers, Jr.

In Memoriam: Carl Wesley Summers, Jr. October 5, 1939 - May 13, 1992

The School of Law mourns the death of Carl Wesley Summers, Jr., whose generous support of the school's scholarship fund has benefited many law students. Born in Kansas City, Missouri, and educated at the University of Missouri and UCLA, Summers was active in Dallas real estate and development for more than 20 years. He founded Summers Associates, Inc. and remained its president until his death. Appointed to SMU's board of trustees in 1985 and to the law school's executive board in 1989, Summers also was a patron of the Dallas Symphony Orchestra and served as chair of the board of trustees of the Highland Park Methodist Church. He is survived by his wife, Susan Brown Summers, and their four children.

Memorials may be made to the C.W. Summers Memorial Trust in care of Harry Crutcher, Esq., 3102 Maple Avenue, Suite 200, Dallas, Texas 75201. ■

1992 Distinguished Law Alumni Awards

Armstrong, Raggio, and DeHay were honored for their contributions to the legal profession and the wider community and for the distinction each brought to the law school as a leader of the bar.

1992 Distinguished Law Alumni Awards recipients. Pictured left to right: Dean Paul Rogers, Mrs. John C. DeHay, Jr., Louise B. Raggio, '52, E. Taylor Armstrong, '31, and Gary D. Elliston, '78, who accepted the award on behalf of the late Mr. DeHay.

A banquet hosted by the SMU Law Alumni Association on May 14, 1992, honored three law school graduates as receipients (one posthumously) of the 1992 Distinguished Law Alumni Awards: **Edwin Taylor Armstrong,** '31; **Louise Ballerstedt Raggio,** '52; and the late **John Carlisle DeHay, Jr.,** '49.

Edwin Taylor Armstrong graduated from Southern Methodist University in 1931 with Bachelor of Arts and Juris Doctor degrees. He was admitted to the State Bar of Texas in the same year. As of counsel to Storey, Armstrong, Steger & Martin, a firm of which he was a founder in 1933, he is still actively practicing law. During World War II he served in the United States Naval Reserve, receiving an honorable discharge with the rank of lieutenant commander.

Armstrong has been active in the Dallas Bar Association, serving as its president in 1952; in the State Bar of Texas; and in the American Bar Association. He is also a fellow of the American Bar Foundation, a fellow in the American College of Probate Counsel, and a research fellow at the Southwestern Legal Foundation. In 1957 Armstrong was president of the Kiwanis Club of Dallas, and from 1961 to 1963 he served as national chancellor of Delta Theta Phi Law Fraternity.

A deacon at Park Cities Baptist Church since 1957, Armstrong has also served as chair of the board of the church. In 1973 he was elected a life deacon. Armstrong has also been keenly interested in the work of the Southwestern Baptist Theological Seminary and Dallas Baptist College.

Married to Carolyn Senter, Armstrong and his wife have two children and three grandchildren: sons E. Taylor Armstrong, Jr., an architect, and William F. Armstrong, an attorney; and grandchildren Matthew Taylor Armstrong, William Fowler Armstrong, and Alexis Armstrong.

Louise Ballerstedt Raggio attended The University of Texas at Austin as an undergraduate. After receiving her degree, she spent a year in Washington as a Rockefeller intern, returning to Austin to work in the National Youth Administration State Office until her marriage in 1941 to Grier H. Raggio.

Subsequently moving to Dallas, Raggio attended SMU's night law school, graduating in 1952 as the only woman in her class. At that time law firms did not employ women lawyers, so Raggio practiced law from her home until 1954, when Dallas County District Attorney Henry Wade hired her as the first female criminal prosecutor. Two years later Raggio and her husband established their own firm of Raggio and Raggio.

A founding member of the State Bar of Texas Family Law Section, Raggio served as its chair from 1965-1967. Under her direction the Marital Property Act of 1967 was enacted to radically change the property rights of married women in Texas. During her tenure as chair she also initiated the Family Code project, which led to the first completed Family Code in the United States.

In the course of her professional career Raggio has been associated as fellow, director, trustee, or chair with the ABA's Family Law Section, the American Academy of Matrimonial Lawyers, the National Conference of Bar Foundations, the American Bar Foundation, the State Bar of Texas, the Texas Bar Foundation, and the Dallas Bar Foundation. The State Bar of Texas has bestowed on her its highest awards: the Citation of Merit in 1967 and the Presidents' Award in 1987.

Raggio is a member of the board of the First Unitarian Church of Dallas. Her multifaceted services to the community were recognized in 1985 with her election to the Texas Women's Hall of Fame. Five years later the International Women's Forum honored her with their "Woman that has Made a Difference Award."

Raggio is only the second woman graduate of the law school to receive the Distinguished Law Alumni Award. A widow, she practices law with three sons, Grier, Jr., Thomas, and Kenneth. She has seven grandchildren.

John Carlisle DeHay, Jr., served in the U.S. Army during World War II. On his return to civilian life he attended North Texas Agricultural College and Southern Methodist University, where he earned B.B.A. and LL.B. degrees. DeHay was admitted to the State Bar of Texas in 1948, a year before qualifying for his law degree, and joined the legal department of the Employers Casualty Company. In 1951 he left Employers Casualty to become a member of Leachman, Matthews & Gardere, with which, through several name changes of the firm, he practiced for 28 years as associate, partner, and name partner. In 1979 DeHay became one of the founding partners of DeHay & Blanchard, where he was senior partner until his death in November of last year.

In his dedication to the administration of justice and pursuit of professionalism and ethics in the legal profession, DeHay sat on the committees of many organizations. An active member of the International Association of Defense Counsel and the Texas Association of Defense Counsel, he served first as a member of the board of directors and then, in 1987, as president of the latter association. DeHay was elected a fellow of the American College of Trial Lawyers in 1969, the International Academy of Trial Lawyers in 1975, and the Texas Bar Foundation in 1979. A member of the American, Texas, and Dallas Bar Associations, he served as chair of the board of directors of the Dallas Bar Association in 1974.

DeHay is survived by Jeanie, his wife of 35 years, their daughter Leslie DeHay, and his mother Valda DeHay.

Armstrong, Raggio, and DeHay were honored for their contributions to the legal profession and the wider community and for the distinction each brought to the law school as a leader of the bar. **Albon O. Head, Jr.,** '71, chair of the selection committee, presented Armstrong and Raggio with crystal gavels as symbols of their award. **Gary D. Elliston,** '78, a partner of DeHay & Blanchard, accepted a similar gavel on behalf of his late colleague. ■

At that time law firms did not employ women lawyers so Raggio practiced law from her home until 1954, when Dallas County District Attorney Henry Wade hired her as the first female criminal prosecutor.

SMU Graduate Takes Office as President of State Bar of Texas

One of Miers's top priorities is to encourage lawyers to become more involved in solving local and statewide community problems.

Harriet E. Miers, '70, is the first woman president of the State Bar of Texas. She is also the third SMU graduate to hold that office. One of about a dozen women in her 140-student law school class, Miers is used to leading the way. In 1972 she was the first female lawyer hired by a major Dallas law firm—now Locke Purnell Rain Harrell—of which she has been a shareholder since 1978, specializing in commercial litigation.

Miers was the first woman president of the Dallas Bar Association, in 1985. During her DBA presidency she focused on increasing the number of minorities active in the bar. As a result of her efforts the presidents of the J.L. Turner Legal Society and the Mexican-American Bar Association became members of the DBA's board of directors. While in office Miers helped plan the now-annual Bar None show, which raises funds to support the Sarah T. Hughes Diversity Scholarship at SMU. She also was a member of the initial planning group of the Conference on the Professions—Physicians, Lawyers, and Clergy. (The seventh conference in this series is reported elsewhere in this issue of *The Brief*.)

Miers has always combined her professional responsibilities with a a deep sense of public service. She was an at-large member of the Dallas City Council in 1989 and 1990. And this year, in recognition of her commitment to the wider community, she received two awards: The Dallas Lawyers' Wives' Club Justinian Award for exemplary volunteer service to the Dallas community; and the Dallas chapter of the American Jewish Committee's Institute of Human Relations Award, citing her as one whose "life's work mirrors [the AJC's] goals in its determination to build a better world for all mankind."

Harriet E. Miers, '70

Miers has a busy schedule ahead of her as president of the State Bar of Texas. The state bar is due to report to the state legislature its recommendations for pro bono work by Texas lawyers, an issue not without controversy. In addition the state bar must implement the recently approved revised disciplinary system within the Texas bar. The new code mandates district grievance committees, investigatory panels, and a statewide board to review allegations of misconduct.

One of Miers's top priorities is to encourage lawyers to become more involved in solving local and statewide community problems. As an aspect of this venture, she would establish a mentor program across the state. Under the program, lawyers would work with young minority and underprivileged students, beginning at the 5th and 6th grade level. Acting as role models, these lawyers would encourage students to aspire to professional careers, not only in law but in other fields for which the students' individual abilities and interests suit them.

Assuredly, the year ahead will see more "firsts" for Harriet Miers. ■

Graduate News

50 The Honorable **Clyde R. Ashworth,** Visiting State District Court Judge, Arlington, was one of the judges wounded by gunfire in the Fort Worth courthouse on July 1, 1992. The entire law school community wishes him a complete recovery. Earlier in the year Judge Ashworth had served as a presiding judge at the ATLA 1992 National Student Trial Advocacy Competition.

55 **Richard W. Hemingway,** Norman, Oklahoma, has retired as the Eugene O. Kuntz Professor of Oil, Gas and Natural Resources Law at the College of Law, University of Oklahoma.

57 **Peter S. Chantilis** Chantilis & Brousseau, Dallas, has published "Alternative Dispute Resolution Procedures Act" in the November 1991 issue of *International Business Lawyer.*

60 State Senator **O.H. "Ike" Harris,** Dallas, has been appointed chair of the Senate Jurisprudence Committee.

61 **Joann Peters,** Dallas, has been elected a 1992 director of the Dallas Women Lawyers Association.

63 **Fred Head,** Athens, Texas, was honored by the State Bar College for excelling in the continuing study of law in 1991.

68 **Jim Burnham,** Dallas, has been elected chair of the board of directors of the Dallas Bar Association.

70 **Ronald L. Goranson,** Milner, Goranson, Sorrels, Udashen, Wells & Parker, Dallas, has been elected second vice-president of the Texas Criminal Defense Lawyers Association.

71 **Alfred W. Ellis,** Dallas, has been elected a state bar director for District 6, Place 3, State Bar of Texas. **Joseph E. Nowlin,** Gardere & Wynne, Dallas, has been elected director at-large to the board of directors of the Dallas Bar Association. **George C. Roland, Jr.,** McKinney, has been elected 1992 chair of the Texas Criminal Defense Lawyers Educational Institute.

72 **R. Dennis Anderson,** Fulbright & Jaworski, Houston, was selected as a co-recipient of the Texas Bar Foundation's 1992 Outstanding Law Journal Article Award. He has also been elected to the executive committee of the Texas Business Law Foundation.

73 **Drew N. Bagot,** Gardere & Wynne, Dallas, has been elected chair of the board of the Timberlawn Psychiatric Research Foundation. **R. Brent Harshman,** Maxus Energy Corporation, Dallas, has been admitted to the bar of the State of Colorado. **Ralph C. Jones,** Carter, Jones, McGee, Rudberg & Mayes, Dallas, has been elected the 1992 vice president-administrative of the Dallas Bar Association; he is also secretary-treasurer of the American Board of Trial Advocates. The Honorable **Linda B. Thomas,** Fifth District Court of Appeals, Dallas, received the 1992 Distinguished Alumni Award from the University of Texas at Arlington.

76 **John Howie,** Misko, Howie & Sweeney, Dallas, spoke at the ATLA annual convention and at the ATLA's National College of Advocacy seminar in San Francisco. **Steven D. Nelson,** Winstead Sechrest & Minick, Dallas, has been elected president of the Greater Dallas Crime Commission and a member of the board of directors of the Dallas chapter of the Associated General Contractors of America. Professor **Gerald S. Reamey** (also LL.M. '82), St. Mary's University School of Law, San Antonio, received the 1992 St. Mary's University Distinguished Faculty Award for teaching excellence. Professor Reamey has recently published the second edition of *Texas Criminal Procedure* (co-authored with Professor **Walter W. Steele, Jr.**), the fourth edition of *A Peace Officer's Guide to Texas Law* (co-authored), and "'Special Needs' Meet Probable Cause: Denying the Devil Benefit of Law," 19 *Hastings Constitutional Law Quarterly* 295 (1992).

Peter S. Chantilis, '57

R. Dennis Anderson, '72

Linda B. Thomas, '73

Graduate News (continued)

Gerald S. Reamey, '76

V. Wayne Ward, '77

Jeffrey A. Kaplan, '81

77 **David L. Botsford,** Alvis, Carssow, Cummins, Austin, has been elected assistant secretary/treasurer of the Texas Criminal Defense Lawyers Association and a 1992 director for the Texas Criminal Defense Lawyers Educational Institute. **V. Wayne Ward,** Cure & Ward, Fort Worth, has been elected 1992 president of the Tarrant County Family Law Bar Association.

78 **Debra L. Adami,** City Attorney, Denton, has been elected vice president of the Denton County Bar Association. **Brian M. Lidji,** Carrington, Coleman, Sloman & Blumenthal, Dallas, has been elected secretary of the Texas Business Law Foundation.

79 **J. Pink Dickens,** Plainview, has been elected a 1992 director of the Texas Criminal Defense Lawyers Educational Institute.

80 The Honorable **Bruce Auld,** 352d Texas State District Court, served as a presiding judge of the ATLA 1992 National Student Trial Advocacy Competition. **Eugene J. Flynn,** Dallas, has been appointed an adjunct professor at the Dallas/Fort Worth School of Law. **Brian D. Melton,** Melton, Weber, Whaley, Letteer & Mock, Dallas, has been elected to the 1992 board of directors of the Dallas Bar Association.

81 The Honorable **Jeffrey A. Kaplan** has been appointed to the Court of Appeals, Fifth District of Texas. **Paula Sweeney,** Misko, Howie & Sweeney, Dallas, has been elected State Bar Director for the Dallas District.

82 **Gregory G. Jones,** Russell, Turner, Laird & Jones, Fort Worth, is an adjunct professor at Texas Christian University; he has been elected 1992-93 president of the Tarrant County Trial Lawyers Association; he also addressed the members of the Association of Trial Lawyers of America at their annual convention in Washington, D.C., and served as co-chair of the ATLA 1992 National Student Trial Advocacy Competition and the STAC national finals. **Raymond C. Jordan, Jr.,** Meadows, Owens, Collier, Reed & Coggins, Dallas, has been certified as an estate planner by the National Association of Estate Planners. **Michael L. Knapek,** Jackson & Walker, Dallas, spoke at a seminar sponsored by the ABA's Young Lawyers Division Litigation Committee at the ABA Midyear Meeting in Dallas. **Rona R. Mears,** Haynes and Boone, Dallas, has published "Joint Ventures in Mexico: A Current Perspective," 23 *St. Mary's Law Journal* 611 (1992). **Joe C. Tooley,** Fulbright & Jaworski, Dallas, has been elected to the Texas Civil Justice League's Products Liability Committee; he also serves as chair of the products liability legislative team for the Texas Association of Defense Counsel. **Belinda A. Vrielink,** Thompson, Coe, Cousins & Irons, Dallas, has been board certified in civil appellate law by the State Bar of Texas.

83 **Thomas M. Wheeler,** Abilene, was elected a 1991-92 District 17 board member of the Texas Young Lawyers Association.

84 **Mark A. Shank,** Clark, West, Keller, Butler & Ellis, Dallas, has been elected to the 1992 board of directors of the Dallas Bar Association.

85 **Linda A. Wilkins,** Locke Purnell Rain Harrell, Dallas, has been elected a fellow of the American College of Trust and Estate Counsel. **Carol A. Wilson,** Mankoff, Hill, Held & Goldberg, Dallas, has been elected 1992 president of the Dallas Women Lawyers Association.

86 **Alyson C. Dover,** Dallas, has been elected 1992 secretary of the Dallas Association of Young Lawyers. **Stephanie A. Hall,** Hall & Odom, Dallas, ha been elected 1992 treasurer of the Dallas Women Lawyers Association.

88 **Kay E. Goggin,** Law Office of R.C. Jaramillo, Dallas has been elected secretary of the Social Security Disability Law Committee.

89 Dr. **J. Lee Baldwin,** Dallas, an adjunct professor at the Dallas/Fort Worth School o Law, has been elected 1992 secretary of the Dallas Women Lawyers Association.

90 **Betty M. Ellsworth,** Fina Inc., Dallas, has been admitte to practice before the U.S. Patent and Trademark Office.

International Graduates

Australia
Neil Rees, LL.M. '81, has recently been appointed Foundation Dean of the Faculty of Law at the University of Newcastle in Newcastle, New South Wales, Australia. He reports: "I now find myself in the midst of the exciting and challenging task of building a new law faculty." The University of Newcastle is located approximately 100 miles north of Sydney.

Germany
Willi Joachim of Bielefeld, Germany, LL.M. '84, has published "The Reasonable Man in U.S. and German Commercial Law" in the 1992 edition of the *Comparative Law Yearbook of International Business* and "The Liability of Supervisory Board Directors in Germany," 25 *The International Lawyer* 41 (1991).

Republic of Korea
Dr. **In Koo Moon,** a graduate research student at SMU School of Law in 1955, recently paid a return visit to the school, meeting with Dean Rogers and touring Underwood Law Library. Dr. Moon is currently president of the Korean Legal Center, located in Seoul. Founded in 1956 as a center of Korean legal culture, its membership comprises judges, public prosecutors, lawyers, law professors, and other legal professionals. The Center's library had its genesis in a donation of approximately 2,000 law books by SMU's Dean **Robert G. Storey.** The central operation of the Center is fourfold: it publishes the laws of the Republic of Korea, and translates those laws into English; it publishes an annual law journal, *Justice,* now in its 25th volume; it translates Korean laws, regulations, and other materials at the request of governmental and private institutions; and it sponsors conferences on a wide variety of legal topics. ■


Dr. In Koo Moon


Willi Joachim

In Memoriam

Jessie Shepperd Scothorn, '30
December 11, 1991
James L. Walsh, Jr., '33
April 22, 1992
A. A. White, '35
March 10, 1992
Phillip Barron Goode, '36
September 6, 1990
Irene Lindsay MacMaster, '36
Lucian W. Parrish, '41
March 28, 1992
Charles N. Temple, Jr., '44
January 16, 1992
Eleanor Hall Hale, '46
John B. Look, Jr., '48
Alva J. Richey, '48
April 27, 1992
Robert C. Green, '50
January 1, 1960
John J. Mead, Jr., '50
November 30, 1991
John Mitchell, '50
Elmer L. Watson, Jr., '50
February 10, 1992
Robert B. Baker, '52
Tom Dilworth, '52
June 17, 1963
Robert W. Smith, '54
April 20, 1992
Roy P. Cookston, '56
December 10, 1991
Bill W. Bailey, '57
February 11, 1992
Stanley Stillman Crooks, '59
April 27, 1992
David C. Smith, '59
Robert C. Wynn, '62
February 6, 1992
John P. Falconer, Jr., '65
February 18, 1992
Hayden H. Cooper, '68
April 28, 1992
Galen M. Sparks, '68
January 1, 1992
Alice Rogers Branson, '70
May 19, 1992
Charles N. Lundy, '70
November 6, 1991
Paul Schaumburg, '72
December 22, 1991
Frank P. Vogt, '72
Curt W. Cronk, '88 ■

Births

Robert Clark, born December 11, 1991, to Cathy Flowers and **William O. Flowers II,** '87.
Dustin Allen, born January 20, 1992, to **Diane F. Norwood,** '88, and Todd Norwood. ■

T. Neal Combs, '68

Emily S. Barbour, '87

Richard N. Countiss, '61

Changes to New Firms/Companies

Robert L. Trimble, '64: Andrews & Kurth, Dallas
T. Neal Combs, '68: Leonard Hurt Terry & Blinn, Dallas
Bowen L. Florsheim, '69: Epstein Becker & Green, Dallas
Joann H. Means, '74: Dawson, Sodd, Moe & Means, Corsicana
Edward F. Gilhooly, '75: Calhoun Gump Spillman & Stacy, Dallas
Jeffrey S. Lynch, '75: True Rohde Lynch & Sewell, Dallas
Don D. Bush, '76: Calhoun Gump Spillman & Stacy, Dallas
James R. Littlejohn, '76: Donohoe, Jameson & Kolb, Dallas
Robert E. Luxen, '76: Crouch & Hallett, Dallas
William B. Chaney, '77: Conant, Whittenburg, Whittenburg & Schachter, Amarillo
Cleveland Clinton, '78: Brown McCarroll & Oaks Hartline, Dallas
Kim L. Lawrence, '80: Fishman, Jones, Walsh & Carroll, Dallas
Elaine G. Harrison, '82: Donohoe, Jameson & Kolb, Dallas
Scott B. Anderson, '84: Jenkens & Gilchrist, Dallas
Joyce W. Lindauer, '84: Baskin & Novakov, Dallas
Randall G. Ray, '84: Gardere & Wynne, Dallas
Marjorie D. Arneson, '85: Mobil Exploration and Producing, U.S. Inc., Dallas
James L. Johnson, '85: Arter & Hadden, Dallas
Paula A. Lock, '85: Biles & Lock, Denton
Gregory W. Samson, '85: Passman & Jones, Dallas
C. John Scheef III, '85: David & Goodman, Dallas
Jon B. Burgin, '86: Kane, Coleman & Logan, Dallas
Bradley W. Lingo, '86: Great-West Life Assurance Company, Englewood, Colorado
Emily S. Barbour, '87: Caolo, Meier & Jones, Dallas
David M. Grimm, '88: Law Offices of Michael C. Dodge, Dallas
Douglas J. Buncher, '89: Calhoun, Gump, Spillman & Stacy, Dallas
William J. Minick III, '89: Caolo, Meier & Jones, Dallas
Jo Ann V. Magno, '89: Law Offices of Clark Garen, Orange, California
William B. Shelton, '89: Koons, Fuller & Vanden Eykel, Dallas
Gary L. Hach, '90: Goins, Underkofler, Crawford & Langdon, Dallas
Sandra E. Illmer, '90: Donohoe, Jameson & Kolb, Dallas
Jill Lederer, '90: Cox & Smith, Dallas
Lynn S. Switzer, '90: Baker & Botts, Dallas ■

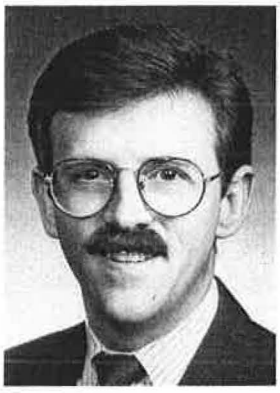
New Firms/Companies Formed

Richard N. Countiss, '61: Burrow, Countiss & Barrie, Houston
C. L. Mike Schmidt, '65: Law Office of Mike Schmidt, Dallas
Michael C. Dodge, '67: Law Offices of Michael C. Dodge, Dallas
Robert N. Virden, '68: Law Office of Robert N. Virden, Dallas
Robert E. Rader, Jr., '69: Rader, Smith, Campbell & Fisher, Dallas
J. Graham Hill, '76: Hill, Parker & Johnson, Houston
Ronald A. Foxman, '77: Haynie Higier Maris & Foxman, Dallas
Todd A. Hunter, '78: Hunter & Handel, Corpus Christi
John O. Tyler, Jr., '78: Tyler & Das, Houston
James O. Darnell, '80: Grambling Darnell, El Paso
Robert E. Holmes, Jr., '81: Robertson & Holmes, Dallas
Elise Galler Gold, '82, and **Jacob M. Gold,** '82: Gold & Gold, Plano
Daniel D. Dydzak, '83: Law Offices of Daniel D. Dydzak, Beverly Hills, California
Michael E. Tomlin, '83: Law Office of Michael Tomlin, Corpus Christi
Kirt M. Kinser, '84: Law Office of Kirt M. Kinser, Plano
Joseph M. Coleman, '85: Kane, Coleman & Logan, Dallas
Stephanie A. Hall, '86: Hall & Odom, Dallas
Raymond J. Kane, '88: Kane, Coleman & Logan, Dallas
Todd H. Tinker, '89: Law Office of Todd H. Tinker, Dallas
Laura A. Sharp, '90: Alpert Sharp & Boyd, Dallas ■

New Partners, etc.

James S. Robertson, Jr., '57: Gardere & Wynne, Dallas (of counsel)
R. Jeffrey Schmidt, '71: Godwin Carlton & Maxwell, Dallas (shareholder)
Paul M. Bohannon, '75: Porter & Clements, Houston (partner)
John H. Phillips, '75: Boone, Boone & Phillips, Dallas (partner)
Stephen E. Stein, '78: SGS-Thompson Microelectronics, Inc., Carrollton (director of business administration)
Richard E. Miller, '79: Gardere & Wynne, Dallas (partner)
John C. Arneson, '80: Lastelic Anderson & Arneson, Dallas (member)
Joel W. Mohrman, '80: McGlinchey, Stafford, Cellini & Lang, Houston (director)
Michael E. Dillard, '82: Akin, Gump, Hauer & Feld, Dallas (management committee)
Suzanne Bass, '83: Bird & Reneker, Dallas (shareholder)
Thomas P. Arnold, '84: Locke Purnell Rain Harrell (shareholder)
Bretton C. Gerard, '84: Shapiro & Gerard, Plano (partner)
Britton D. Monts, '84: Bird & Reneker, Dallas (shareholder)
Deborah C. Ryan, '84: Gardere & Wynne, Dallas (partner)
Thomas E. Shaw, '84: Bird & Reneker, Dallas (shareholder)
Craig L. Stahl, '84: Bracewell & Patterson, Houston (partner)
Derry W. Swanger, '84: Graves, Dougherty, Hearon & Moody, Austin (shareholder)
Lisa G. Duffee, '85: Godwin, Carlton & Maxwell, Dallas (participating associate)
Michael G. Foster, '85: Decker, Hardt, Kopf, Harr, Munsch & Dinan, Dallas (director)
James W. Rusher, '85: Gable & Gotwals, Tulsa, Oklahoma (member)
Randy R. Shorb, '85: Gable & Gotwals, Tulsa, Oklahoma (member) ■

Thomas E. Shaw, '84



Derry W. Swanger, '84

Special Events for Graduates

The following events honored graduates and friends of the law school:

November 2, 1991
Fort Worth Law Alumni Dinner
Joe T. Garcia's, Fort Worth

November 7, 1991
Tulsa Alumni Reception
Hosts: **Michael Bass,** '86, and **Sandy Bass,** '86, at their home

November 14, 1992
Law Alumni Association Council Fall Meeting
Major Donor Reception
Tower Club, Dallas

November 19, 1991
Council for Excellence CLE
Speaker: Professor Elizabeth G. Thornburg

November 21, 1991
Corporate Counsel's Council
Speaker: Ira M. Millstein, Senior Partner, Weil, Gotshal & Manges, New York

Reception honoring the volunteers of the 1991-92 Law School Fund Drive, home of Paul and Lynn Rogers, February 13, 1992. Pictured left to right: Jo Ann Means, '74; Terry Means, '74; Jeff Kinsel, '74.

November 30, 1991
Law School Open House—Admission Information Session
North Texas Area Law School Graduates and Guests

January 4, 1992
San Antonio Alumni Reception
Hosts: **Evelyn Biery,** '73, **Philip Pfeiffer,** '72

Special Events (continued)

January 6 & 7, 1992
Los Angeles and Orange County Alumni Dinners
Hosts: **Carl W. McKinzie,** '66, **Timothy Reames,** '61, **Claudia Parker,** '85

January 30, 1992
Irving L. Goldberg Lecture
Hughes Trigg Student Center
Speaker: Judge Hubert L. Will

February 13, 1992
Volunteer Thank You Reception
Hosts: Dean Paul Rogers and Lynn Rogers

February 14, 1992
Tyler Bar Association and SMU Law School Tyler Alumni Luncheon
Speaker: Dean Paul Rogers

February 23, 1992
Sarah T. Hughes Law Library Endowment Fundraiser
Host: Nero's Italian Restaurant

March 19, 1992
St. Louis Area Alumni Reception
SMU Alumni Association in conjunction with SMU School of Law
Speaker: Dean Paul Rogers

March 26, 1992
Scholarship Donor Reception
Dean's Suite, School of Law

March 31, 1992
Corporate Counsel's Council Luncheon
Speaker: Harvey R. Miller, Senior Partner
Weil, Gotshal & Manges, New York

April 8, 1992
Reception for Austin Area Admitted Students
Host: Small, Craig & Werkenthin, Austin

Craig & Nancy Parsons & Ken & Becky Morris 1971/1972 Class Reunion, Lakewood Country Club, June 6, 1992.

April 15, 1992
Conference on the Professions: "Chemical Dependency—The Professional's Responsibility to Each Other and to the Community"
Sponsored by: SMU School of Law, Dallas Bar Association, Dallas County Medical Society, SMU Perkins School of Theology, University of Texas Southwestern Medical Center at Dallas

April 16, 1992
Executive Board Meeting and Dinner
Dean's Suite, School of Law

April 23, 1992
Council for Excellence Reception
Tower Club, Dallas
Speaker: Alison Cooper, Director of Career Services, SMU School of Law

April 25, 1992
1951 & 1952 SMU Law School Reunion
Reception and Dinner: Dean's Suite, School of Law
Reunion Chairs: **Joe Tamasy,** '51, **Horace B. Watson, Jr.,** '51, **Frank Norton,** '52

April 28, 1992
Council for Excellence CLE
Speaker: Professor Jeffrey M. Gaba

May 1, 1992
1941 & 1942 SMU Law School Reunion
Reception and Dinner: Dean's Suite, School of Law
Reunion Chairs: **Lamar Holley,** '42, **Edwin Fleming,** '41, **Waller Collie,** '42

Hawaii Bound

Vacation in Hawaii on the islands of Lana'i and Maui. Mid-July 1993. Special for SMU law graduates. More information in October.

Learned Paw
1979-1992
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May 7, 1992
1991 Class Happy Hour
The Bone, Deep Ellum, Dallas

May 7, 1992
Austin Alumni Luncheon
Hosts: **Edward O. Coultas,** '74, **Thomas E. Sedberry,** '64

May 14, 1992
Law Alumni Association Council Spring Meeting
Distinguished Law Alumni Awards Dinner
Recipients: **E. Taylor Armstrong,** '31, **Louise B. Raggio,** '52, the late **J. Carlisle DeHay,** '49

May 18, 1992
Houston Alumni Reception
Hosts: **Blake Tartt,** '59 and Barbara Tartt

June 6, 1992
1971 & 1972 SMU Law School Reunion
Lakewood Country Club, Dallas
Committee Chairs: **Ron Aland,** '72, **Steve Barnett,** '72, **Hazel Hoffman,** '71, **David Ives,** '71, **James LaCorte,** '72, **Jack Spillman,** '71, **Knox Tyson,** '71, **Larry Wall,** '72, **Joe Whistler,** '72, **Nathan White,** '72

June 26, 1992
State Bar of Texas Reception
Honoring President-Elect **Harriet Miers,** '70
Corpus Christi
Sponsor: SMU School of Law in conjunction with the State Bar of Texas and Women and the Law Section

September 3, 1992
Wichita Falls Alumni Event
SMU School of Law and Edwin L. Cox School of Business

The 1992 Law School class celebrated its first year graduation anniversary at "The Bone," May 7, 1992. Pictured are Sherry Evans, Leslie Morrell, and host Mike Sawicki.

September 19, 1992
Albuquerque, New Mexico, Alumni Dinner
In conjunction with SMU vs. University of New Mexico football game

September 25 & 26, 1992
1961 & 1962 and 1981 & 1982 SMU Law School Reunions
Friday, September 25th:
Reception: SMU School of Law
Saturday, September 26th:
SMU vs. TCU football game, Ownby Stadium
Dinner at Fair Park Hall of State and Special Viewing of "Catherine the Great" Exhibition

CATHERINE THE GREAT
TREASURES OF IMPERIAL RUSSIA

Committee Chairs: **Major Ginsberg,** '62, **Richard Jenkins,** '62, **Larry Maxwell,** '62, **Ben Sturgeon,** '62, **Mark Troy,** '62; **John Creuzot,** '82, **Dawn Moore,** '81, **Tracy Thompson,** '81 ■

SMU Law School Alumni Directory

All Law graduates with current addresses will soon receive the Law School Alumni Directory Questionnaire. Be sure to complete and return your Directory Questionnaire promptly! If you don't you may be omitted. Don't take a chance . . . watch for your questionnaire and return it.

Spring Reunions (clockwise from the top) 1941-42 Class; 1971-72 Reunion Committee; and 1951-52 Reunion, Roland Scales and Joe Tamasy.

Continuing Legal Education

Topics planned or under consideration for the 1992-93 Continuing Legal Education program include:

Fall 1992

Civil Litigation Arising from a Failed Financial Institution
1992 Advanced Federal Tax Litigation Conference
Environmental Litigation Seminar
1992 Federal White Collar Crime Seminar
Jury Psychology: What You Say vs. What They Hear
Featuring: Paul M. Lisnek
American Disabilities Act Seminar
Corporate Counsel Seminar

Spring 1993

Real Estate Law: Mortgages—In Depth
Real Estate Law: Leases—In Depth
Personal Injury Seminar
Appellate Advocacy Seminar
Winning Trial Strategy
Featuring: James W. McElhaney
Master Evidence
Featuring: James W. McElhaney
Advanced Bankruptcy Seminar
Persuasion in the Courtroom
Featuring: Joseph V. Guastaferro
Negotiation and Settlement in the '90s
Featuring: Gerald R. Williams
Advanced Civil Trial Short Course
Commercial Lending Institute
Oil and Gas Seminar
Multi-State Labor and Employment Law Seminar

A calendar for these programs was sent to the entire bar in the middle of August. If you did not receive the calendar or if you would like more information regarding any of the above programs, call (214) 692-2644 (Office of Continuing Legal Education, SMU School of Law). ■

Regis W. Campfield Receives Endowed Faculty Fellowship

Professor of Law Regis W. Campfield has been named the first **Marilyn Jeanne Johnson Distinguished Law Faculty Fellow.** Professor Campfield, a nationally recognized expert on estate planning, has taught at SMU School of Law since 1977. A graduate of the University of Virginia Law School, he is the author of *Estate Planning and Drafting* and *Estate and Gift Taxation*, and co-author of *Taxation of Income: Fiduciary Tax Guide* and *Taxation of Estates, Gifts, and Trusts.* He is also the current editor of *Probate Lawyer,* the annual publication of the American College of Trust and Estate Counsel.

Listed in *Who's Who in American Law,* Professor Campfield is a member of the American Law Institute, a regent of the American College of Trust and Estate Counsel, a fellow of the American College of Tax Counsel, and a former member of the executive council of the International Academy of Estate and Trust Law. He is also a member of the Fiduciary Transfer Tax and Computer Committees of the American College of Probate Counsel.

A member of the American Bar Association's Section of Taxation, and of the section's Estate and Gift Tax Committee, he has recently completed service as chair of the section's Committee on Tax Practice Management. Also a member of the ABA's Section of Real Property, Probate and Trust Law, he has chaired that section's Committee on Tax Legislation and Regulations: Joint Property.

Professor Campfield joined the SMU faculty after teaching at Notre Dame Law School. He has also been a visiting professor at the University of Virginia School of Law and is permanent chair of the Notre Dame Estate Planning Institute. His professional interests include computer applications to the efficient and economical delivery of legal services. He teaches courses in wills, trusts, estate and gift taxation, and estate planning, and is a frequent participant in continuing legal education programs on those subjects.

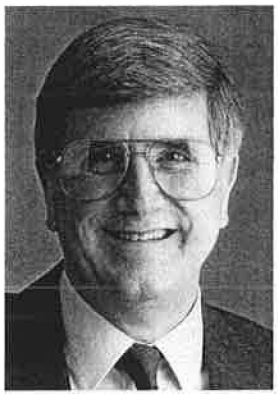
Dr. **Roger Stanley Johnson,** '91, who earned a medical degree from the University of Minnesota in 1951, and practiced medicine for more than 35 years, established the Marilyn Jeanne Johnson Distinguished Law Faculty Fellowship in honor of his wife. In announcing the fellowship, Dean Paul Rogers noted that "its purpose is to recognize nationally acclaimed legal scholars and outstanding teachers. No one more amply qualifies for those ranks than Regis Campfield. He is widely acknowledged as a national expert in trusts and estates and is one of our finest classroom teachers." ■

Regis W. Campfield

"[The fellowship's] purpose is to recognize nationally acclaimed legal scholars and outstanding teachers. No one more amply qualifies for those ranks than Regis Campfield."

Teaching Excellence Recognized

Professor **Harvey Wingo** received the 1991-92 Dr. Don M. Smart Teaching Award. The annual award, established by Dr. **Don M. Smart,** '65, goes to the full-time faculty member determined by a vote of the student body to be the most effective classroom instructor in the law school for the academic year. Professor Wingo has now been honored twice with this award, having been its first recipient in 1982. ■



Harvey Wingo

Linda S. Eads

John S. Lowe

C. Paul Rogers III

Publications and Activities

Roy Ryden Anderson, Professor of Law: "In Support of Consequential Damages for Sellers," 11 *Journal of Law and Commerce* 123 (1992).

Maureen N. Armour, Assistant Professor of Law: "Fifth Circuit," in *Sanctions: Rule 11 and Other Powers* 99-127 (American Bar Association, 3d ed. 1992).

Alan R. Bromberg, University Distinguished Professor of Law: a new chapter on enforcement of partnership rights and obligations to volume 2 of *Bromberg and Ribstein on Partnership*. Professor Bromberg's article (co-authored with others), "Registered Limited Liability Partnerships," originally published in the September 1991 issue of the *Bulletin* of the State Bar of Texas Business Law Section and reprinted in 35 *Texas Bar Journal* 728 (July 1992), received the Texas Bar Foundation's 1992 Outstanding Law Journal Article Award.

Linda S. Eads, Associate Professor of Law: "From Capone to Boesky: Tax Evasion, Insider-Trading, and Problems of Proof," 79 *California Law Review* 1421 (1991).

Stefan H. Krieger, Assistant Professor of Law: "The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Rate Making in Public Utility Proceedings," 1991 *University of Illinois Law Review* 983.

Henry J. Lischer, Jr., Professor of Law: co-author of the 1991 pocket parts to volumes 16, 17, and 18 of *West's Legal Forms—Estate Planning with Tax Analysis.*

John S. Lowe, George W. Hutchison Professor of Energy Law, lectured on "Principles of Energy Policy" at Washburn University in Topeka, Kansas. The lecture will appear as an article in the *Washburn Law Journal.* Professor Lowe is the incoming chair of the ABA Section of Natural Resources, Energy, and Environmental Law, the first academic to hold this position.

Thomas Wm. Mayo, Associate Professor of Law, spoke on "Advance Directives: Implementation of the Patient Self-Determination Act" to the 39th Annual Congress of the Association of Operating Room Nurses in Dallas; and on "Euthanasia" to the 13th Annual Conference of the Southwest Society on Aging in San Antonio.

Frederick C. Moss, Associate Professor of Law, taught in Widener University Law School's intensive 5-day Advanced Trial Advocacy course at the school's Delaware campus.

Joseph J. Norton, Professor of Law: "Projecting Trends in International Bank Supervision: Post BCCI," in *International Finance in the 1990s* (Lloyds 1992); "The Multiple Dimensions of the Bank-Customer Relationship in the U.S.," in *A Comparative Study of the Bank Customer Relationship* (R. Cranston ed., Lloyds 1992); semi-annual supplement to *Lender Liability: Law and Litigation* (Matthew Bender); annual supplement to *Commercial Finance Guide* (Matthew Bender); general editor, *Understanding Bankruptcy in the U.S.: A Handbook of Law and Practice* (Blackwell Business Series 1992).

C. Paul Rogers III, Dean and Professor of Law: *Antitrust Law: Policy and Practice* (2d ed. 1992) (co-authored with William R. Andersen). He was also elected to the board of directors of the Dallas Bar Foundation.

Marc I. Steinberg, Rupert and Lillian Radford Professor of Law: 1992 release to *Securities Practices Federal and State Enforcement*; "Legal Opinions in Securities Transactions," 16 *Journal of Corporation Law* 375 (1991) (co-authored); "The Inside Story on Insider Trading," *Australian Law News,* March 1992, at 18; "Securities Malpractice Exposure: Client Representation—Certain Problematic Situations," 20 *Securities Regulation Law Journal* 199 (1992).

Peter Winship, James Cleo Thompson Sr. Trustee Professor of Law: "The Law Professor Refugee," 18 *Syracuse Journal of International Law and Commerce* 3 (1992) (co-authored with Bernhard Grossfeld). Professor Winship also presented papers on "Working with the U.N. Sales Convention," to the DuPont Global Lawyers' meeting in Wilmington, Delaware; "Working with the U.N. Sales Convention," at "International Commercial Transactions: Legal and Business Fundamentals," co-sponsored by the ABA Section of International Law and Practice and Tulane Law School, in New Orleans; and "The Law Professor Refugee: Ernst Rabel and Karl Llewellyn," at the Law and Society Association annual meeting in Philadelphia. ■

New Faculty

Stephen Gardner, Visiting Assistant Professor of Law, B.A., 1972, J.D., 1975, University of Texas at Austin. From 1976 to 1981 Professor Gardner served as a staff attorney with the Legal Aid Society of Central Texas, which he left to become Director of the Office of the Students' Attorney at the University of Texas. In 1982 Professor Gardner moved to New York State as an assistant attorney general in the Bureau of Consumer Frauds and Protection, a position he held for two years before returning to Texas as the assistant attorney general in charge of the Dallas Regional Office from 1984 to 1992. In February 1992 Professor Gardner opened his own law office, concentrating on a private plaintiff-oriented practice, primarily in consumer law and civil rights. He is certified in civil trial law by the Texas Board of Legal Specialization. In 1988 Professor Gardner received the National Association of Attorneys General "Marvin Award" for "outstanding leadership, expertise, and achievement," and in 1991 was inducted into the Center for Science in the Public Interest, Nutrition Action Hall of Fame for his "crusading efforts to halt deceptive labeling and advertising of foods and to inspire other law enforcement officials to do the same." Professor Gardner has written "See Dick and Jane Sue: A Primer on State Consumer Protection Laws," to be included in *Course of Study on Product Distribution and Marketing* (ABA-ALI 1992), and "How Green Were My Values: Regulation of Environmental Marketing Claims," 23 *University of Toledo Law Review* 31 (1991). Professor Gardner will be teaching in the Civil Clinic during the 1992-93 academic year.

Michelle D. Monse, Visiting Professor of Law, B.A., 1980, Texas Tech University, J.D., 1983, University of Texas at Austin. Professor Monse was an associate editor of *Texas Law Review* and graduated as a member of the Order of the Coif. Following graduation, Professor Monse joined the Dallas firm of Carrington, Coleman, Sloman, and Blumenthal, where she practiced in the real estate, oil and gas, and litigation sections. In 1989 she accepted a faculty position at the University of Alabama School of Law, teaching in the areas of the legal profession, natural resources law, oil and gas law, and property law. She has recently published "Ethical Issues in Representing Thrifts," 40 *Buffalo Law Review* 1 (1992). Professor Monse will be visiting for the 1991-92 academic year, teaching oil and gas law and professional responsibility.

Illona Sheffey Rawlings, Assistant Professor of Law, B.A., 1978, Howard University, J.D., 1981, Yale Law School. Following graduation Professor Rawlings clerked for Judge Joseph C. Howards, Sr., of the United States District Court for the District of Maryland. From 1983 to 1987 Professor Rawlings served as an assistant attorney general in the Maryland State Department of Personnel, receiving the Exceptional Service Award of the Attorney General's Office in 1985. In 1987 she accepted an appointment as special assistant to the Maryland Attorney General. In 1989 she joined the Lake Charles, Louisiana, firm of Woodley, Williams, Fenet, Palmer, Boudreau & Norman. Professor Rawlings, who was the 1988-89 president of the Alliance of Black Women Attorneys, will teach in the areas of civil rights legislation and constitutional law.

Cheryl Brown Wattley, Visiting Assistant Professor of Law, B.A., 1975, Smith College, J.D., 1978, Boston University. Following graduation Professor Wattley joined the United States Attorney's Office in Connecticut, where she received the 1980 Department of Justice Special Achievement Award. In 1980 Professor Wattley moved to Dallas to become chief of the Economic Crime Unit for the Northern District of Texas within the United States Attorney's Office. During her five-year service in this office she received the 1985 Department of Justice Special Achievement Award, the 1985 Chief Postal Inspector's Award, and special recognitions from the Department of Labor, the Immigration and Naturalization Service, and the Treasury Department's Secret Service. From 1985-1988 Professor Wattley practiced with the Dallas firm of Ravkind, Rolfe, and Baccus-Lobel. Presently Professor Wattley has her own offices as a sole practitioner, with a primary focus on litigation in federal court. She will teach in the Criminal Clinic during the 1992-93 academic year. ■

Writing Competition Winner

The Forum Committee on the 1991 Construction Industry Writing Competition awarded SMU law school 2L **Raleigh W. Newsam II** second prize for his article on the subject of the expanding third party liability of architects for economic loss.

A. J. Thomas Jr. Award Winner

Miriam Louisa Ackels (3L) received the 1991-92 A.J. Thomas Jr. Award for outstanding contribution to SMU School of Law. Ackels is the ninth member of her immediate family to earn a law degree from SMU.

Client Counseling and Moot Court Competitions

Law students this year again performed well in national competitions. Client Counseling Competition team **Kerri Condie** (3L) and **James Slack** (3L) first won the regional competition by defeating teams from Oklahoma, Texas Tech, and Baylor. Going on to the national competition in Portland, Oregon, they placed second among U.S. and Canadian teams, losing only in the final round. The SMU Client Counseling Competition intraschool rounds and the team for the regional and national competitions were sponsored by the Dallas law firm of Winstead Sechrest and Minick.

Winstead Sechrest & Minick's Client Counseling Competition team members Kerri Condie and James Slack placed first in the regional Client Counseling Competition and second in the national competition. From left to right: Wayne Bost, J. Richard White, '73, Dean Paul Rogers, Kerri Condie (3L), James Slack (3L), and C. Bryan Dunklin, '81.

The Robert L. Wagner Sr. National Labor Law Moot Court Team also made an impressive showing on behalf of SMU School of Law. At the national competition, held each year at New York Law School, SMU's team competed against 29 others from across the country to reach the quarter finals. The members of the team, **Michael Mitchell** (3L), **Robert Manley** (2L), and **Bryan Neal** (2L), with student coach **Lisa Kahn** (3L), were sponsored by the Dallas law firm of Clark, West, Keller, Butler & Ellis. Professor Jane Dolkart acted as faculty advisor and coach to the team.

Moot Court Competition team members: left to right back row – David Olesky, Robert Manley, front row – Denise Urzendowski Scofield, coaches Teresa Bohne and Mike Huddleston, '83.

Finally, the National Moot Court Competition team of **Robert Manley** (2L), **David Olesky** (3L), and **Denise Urzendowski Scofield** (3L) placed second with their brief and reached the quarter finals in the regional competition in Oklahoma City, losing to the eventual winner. SMU's National Moot Court Competition team is sponsored by the Dallas firm of Cowles and Thompson, which also provided coaches **Michael W. Huddleston**, '83, and Teresa Bohne for the team. ■

Service Awards

Third-year law students **Bonita Barksdale** and **Jaime Diez** received Distinguished Student Service Awards at the 1992 Distinguished Law Alumni Awards Banquet in May. Barksdale was honored for her work in running the SBA's pro bono program (reported on elsewhere in this issue of *The Brief*), Diez for his leadership as 1991-92 president of the SBA. ■

April Town Meeting

Controversial incidents within the law school regarding racial and ethnic diversity and affirmative action caused Dean Paul Rogers to call an unprecedented "town meeting" near the end of the spring semester. The triggering factor was a flier distributed anonymously asserting that affirmative action programs and a concomitant increase in minority enrollment were lowering the school's national academic standing. The flier was apparently at least in part in response to peaceful protests by some minority students to a negative tenure recommendation for a minority law professor at the school.

In a brief opening statement to the gathering in McFarlin Auditorium Dean Rogers deplored the sentiments in the anonymous flier, categorizing them as "insensitive and hurtful" as well as "dangerously inaccurate." He emphasized that the SMU law school is in the mainstream of legal education in the United States with regard to diversity; that almost all law schools have affirmative action programs to increase diversity; and that those minority students admitted to SMU are academically qualified to succeed in law school. As he pointed out, in the last four years only four students have been excluded from the law school for academic reasons. Of those four, three were white; one was a minority. He then opened the meeting to discussion from the floor.

The comments from a varied group of minority students indicated that while deliberate racial harassment certainly is not absent from the school or the university as a whole, the most widespread forms of racism were more covert and subtle. Examples ranged from being stopped by University Park police solely for being a black in a white neighborhood, to a professor who expressed his surprise at a black student's consistently articulate and well-reasoned answers in class, to social cold-shouldering. The unifying thread running through the minority students' comments was that they were attending SMU because of its strengths as an educational institution, and that they resented having to prove their worth in the face of almost automatic stereotyping. They also resented constantly being expected to be grateful for their opportunity when they were qualified academically and working just as hard for their education as everyone else in the school.

White students who spoke for the most part expressed their dismay at how unaware they were of the feelings of minority students at the school; many appeared bewildered by the minority students' comments. A number did point out, however, that as there is diversity within the minority students, so are white students not a monolithic majority; that the white majority should not be stereotyped any more than should minority students.

In all, while students expressed themselves forcefully in many instances, they did so with civility and maturity. In summing up the meeting, Dean Rogers stated that it was "important that students were talking to each other; not solely throwing accusations at the administration and demanding solutions, but expressing their concerns to each other." Student response was also positive, acknowledging that the resolution of discrimination must begin within their own body. They also realized that the focus of the meeting was only one component of a wider issue of intolerance of anyone who is different by virtue not only of color and ethnic background, but of gender, accent, or physical handicap. Those in the majority can no longer demand that everyone conform to their way of life. Yet as Amy Lou Raney, 1992-93 SBA president, warned at the end of the meeting: "One forum is not going to take care of the issue. It will continue. The SBA cannot deal with the problem without the efforts of every member of the SBA—the whole student body."

The educational and humanitarian mission of this university is to provide truly equal access to the political, economic, and social institutions of a pluralist society. As the only accredited law school in the ethnically diverse Dallas metroplex (where whites will soon be in the minority), the administration and faculty continue to believe it important that the SMU School of Law provide that access. ■

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Change of Address/Graduate News

The Brief invites graduates to write the Office of Development and Alumni Relations with news of interest such as a change of status within a firm, change of association, or selection to a position of leadership in the community or in a professional organization. Announcements of births and deaths are also appreciated. Katherine L. Friend, Director of Development and Alumni Relations, Storey Hall, Dallas, TX 75275-0116.

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